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AUTHOR	Lipka, Jerry; Willer, Cristy
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ABSTRACT

Written with the broad goal of involving high school students in Bristol Bay, Alaska, in the planning and design of their region's future, this combined teacher guide and student text contains the third and fourth units of a seven-unit curriculum. Unit III covers the terms of the Alaska Native Claims Settlement Act and the complicated issues related to 1991 when shareholders will be free to sell stock in Native corporations. Unit IV, "International Perspective," helps students become aware that many of the issues facing them are being addressed by Native organizations and Native peoples around the world. Each unit states objectives, lists lessons in the unit, and specifies instructional materials needed. Each lesson (10 for Unit III and 3 for Unit IV) includes objectives for the learner and procedures for the teacher. Background reading material for students is provided from sources such as newsletters, editorials, news reports, and journal articles. Learning activities for students include participating in a youth conference where Native leaders discuss 1991 issues, role playing, researching 1991 issues, and formulating their own resolutions on 1991. (JHZ)

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PLANNING, DEVELOPMENT, AND CHANGE IN BRISTOL BAY

UNIT III: 1991 AND BEYOND

UNIT IV: INTERNATIONAL PERSPECTIVE

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PLANNING, DEVELOPMENT, AND CHANGE IN BRISTOL BAY

A High School Curriculum

Teacher Guide and Student Text

OCT 1986
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prepared by:

Jerry Lipka
Cristy Willer
Bristol Bay Curriculum Project
Dillingham, Alaska

Department of Education
College of Human and Rural Development
University of Alaska-Fairbanks
Fairbanks, Alaska 99775

December 1984

Revised 1985

Revised December 1985

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UNIT III: 1991 AND BEYOND

OBJECTIVES:

1. The students will become knowledgeable about the issues related to 1991.
2. The students will analyze the 1991 issues.
3. The students, after analyzing these issues, will be able to formulate their own 1991 resolutions.
4. The students will become familiar with some Federal-Indian legislation and understand that ANCSA is a part of that relationship.
5. The students will understand some of the reasons for the "sovereignty movement."
6. The students will be participating at a youth conference and will have opportunities for public speaking.

LESSONS:

1. Identifying the Issues.
2. The Newborns — Part I.
3. The Newborns — Part II.
4. The Newborns and AFN Resolutions.
5. Stock Alienation — To Sell or Not to Sell, That is The Question.
6. Indian Reorganization Act — The Battle for Sovereignty.
7. ANCSA — Part of the Continuing Federal-Indian Legislation.
8. Land Banks — Alaska National Interest Lands Conservation Act (ANILCA) Amends ANCSA.
9. Student Resolutions.
10. The Berger Recommendations.

MATERIALS LIST: Note: Items in brackets refer to either resources available in your school or resources that must be requested in advance.

Lesson 1 - "1991: The Challenge That Must Be Met," Special Supplement to The Tundra Times.

"1991: Moving Toward Answers to the Challenge," AFN Newsletter, July-August 1984.

"1991: Issues and AFN Work Plan." AFN working paper.

[Audiotape:* Janie Leask and Glenn Fredericks (30 min.)]

Lesson 2 - "Enrollment," (Section 5 of ANCSA)

Lesson 4 - "AFN Resolution 84-04"

"All Want Their Children to Receive Share," by Bill Hess. Tundra Times.

"New Natives Dilemma: Fairness or Dilution," in Special Supplement to the Tundra Times p. 3. (See Lesson 1)

Lesson 5 - [Videotape:* Part 3 of "Mergers, Acquisitions, and Takeovers." (19 min.)]

AFN Recommendations in "1991: The Challenge That Must Be Met," Special Supplement to The Tundra Times, pp. 3 and 12. (See Lesson 1)

"1991 Issues and AFN Workplan," Alaska Native News, May/June 1984. (See Lesson 1)

"Take Our Land, Take Our Stock, Take Our Life," Alaska Native News, September 1984.

Lesson 6 - [Videotape:* "ANCSA: The View from Akiachak." (30 min.)]

"Akiachak — A Case of Yup'ik Nationalism." Alaska Native News, January 1984.

"Why Native Sovereignty Needs to be Controlled," by Christopher Batin. Alaska Outdoors, Nov/Dec 1984.

Lesson 7 - [School library copy of Alaska Native Land Claims by Robert D. Arnold]

"Outside Indians Give Views on ANCSA." Tundra Times.

"IRA Information Packet" from the Tanana Chiefs.

Lesson 8 - "Public Law 96-487 (ANILCA) Section 907 Alaska Land Bank."

"Shively Explains 1992 Amendments." Tundra Times, December 3, 1980.

Lesson 9 - "AFN Resolutions," in Special Supplement to The Tundra Times, pp. 6-7. (See Lesson 1)

[Videotape:* "Tools for Tomorrow: 1991 Work in Progress" (30 min.)]

Lesson 10 - "The Alaska Native Review Commission: History." From the "Summary Report on the Overview Roundtable discussions of the ANRC, " Anchorage: February 27 - March 16, 1984, p. 1.

Text.

[Videotape:* "Bearing Witness" (30 min.)]

[Audiotape:* "The People, The Land, and The Law" (30 min.)]

Listening guide to audiotape

"Recommendations," Chapter 7 in Thomas R. Berger's, Village Journey.

*A copy of the audiotapes and videotapes may be obtained by writing

College of Human and Rural Development
Resource Center
505 Gruening Building
University of Alaska-Fairbanks
Fairbanks, Alaska 99775

A blank audiotape and/or a VHS tape must accompany each request. Whenever possible, more than one program will be dubbed onto a tape.

1991 AND BEYOND

INTRODUCTION

1991! The year when your stock can be sold. The year when the younger generation of Native children, those born after 1971, and not included as corporate stockholders, become adults. 1991 symbolizes many of the critical issues facing you. Fortunately, 1991 has not yet arrived and there is time to think carefully, form alternatives, and make decisions.

The material you are about to study is designed to assist you in understanding and becoming more knowledgeable about the Alaska Native Claims Settlement Act and how it will affect you and your communities. You will need to study very hard. The decisions facing you are difficult. The issues are tricky and emotional. At the end of this study guide, we hope you will feel more prepared and ready to participate in public meetings concerned with current Native issues.

There has already been a statewide AFN youth conference which some of you have attended. The Bristol Bay Curriculum Project — together with the Bristol Bay Native Association — will again stage the annual Youth Conference to be held in Dillingham during the late winter or early spring months. At that time, you will have the opportunity to hear Native leaders discuss the 1991 issues, participate in the discussions, and present your own resolutions.

Work hard. Ask questions. It is your future!

1991 AND BEYOND

LESSON 1: Identifying the Issues

Time: Three class periods.

Objectives:

1. The students will be able to identify the most important issues associated with 1991.

2. The students will choose an issue that is important to them.

3. The students will begin to see the relationship between the various 1991 issues and their impact on Native Alaskans.

Procedures:

1. Have your class think of themselves as members of a regional Native Corporation. As a member of this corporation, the students must examine the issues before them.

2. Have the students read
   a. "1991: The Challenge That Must Be Met," Special Supplement to the Tundra Times.
   b. "1991: Moving Toward Answers to the Challenge," AFN Newsletter, V3, N4, July-August, 1984.
   c. "1991: Issues and AFN Work Plan," AFN Working Paper.

3. Listen to the audiotape interview with Janie Leask and Glenn Fredericks (30 min.).

4. Each student should make a list of the issues. For example, list stock alienation followed by a statement as to why this is important. The students should list at least 5 issues.

5. After a brief class discussion on the issues, the class should rank-order the issues in order of most important to least important. Place this list on butcher paper in front of the class.

6. Have each student, or small groups of students, select the issue that is most important to them. If students want to study this issue in depth, contact the curriculum project for additional background material.

7. The students should answer the questions listed on the Student Activity Sheet.

SPECIAL SUPPLEMENT TO THE TUNDRA TIMES

1991: THE CHALLENGE THAT MUST BE MET

Symbol Of The Future For Alaska Natives

For Alaska Natives, 1991 has come to represent the future of their traditional relationship to the land. Some even see 1991 as a reflection of Alaska Natives' ability to maintain their culture, heritage and identity as distinct peoples.

For all of its implications, however, only one thing will happen on December 18, 1991. On that date, the Native corporations organized under the Alaska Native Claims Settlement Act will cancel all outstanding stock and issue new stock to the shareholders.

The new stock will be just like stock in any other American corporation. Shareholders will be able to sell it, pledge it as collateral for a loan, and do anything else that people do with corporate stock.

That "cancellation" of the old, restricted stock will set off other changes as well. The Native corporations will no longer be automatically exempted from federal securities laws. Different corporations would probably face different regulations, but the reporting requirements of the federal Securities and Exchange Commission can be complicated, costly and time-consuming.

When the corporations issue the new, unrestricted stock, any non-Natives who owned stock before – through inheritance or divorce settlements – will be able to vote their stock for the first time.

The prospect of unrestricted stock which can be bought, sold, taken to pay bad debts or taxes the shareholder owes, raises the biggest fears among the Native community.

Some shareholders may be offered large amounts of money for their stock. If enough Native shareholders sell their stock to non-Natives – whether to individuals or to other, non-Native corporations – Natives will lose control of the corporation and the land the corporation owns.

If that happens, the Native corporations would probably be very different than they are now. Land would probably not be preserved for subsistence hunting, fishing and food gathering. Shareholder programs – such as scholarship programs, job banks and cultural foundations – would be ended. The corporation's land and other assets would be used only for the profits they could generate, without regard for the impacts on, or interests of, Natives.

But even under existing law, there are some things that Native corporations can do to give themselves a better chance to remain Native even after 1991. Some of those options were spelled out in amendments to ANCSA that were made in 1980, as part of the Alaska National Interest Lands Conservation Act (also know as "d-2," ANILCA or the Alaska Lands Act).

Under the options in ANILCA, a Native corporation may continue the ban on voting by non-Native shareholders and it may require that the corporation, or the corporation and the shareholder's immediate family have the first chance to buy stock that a shareholder wants to sell. If a corporation wants to use one or both of those options, it must amend its articles of incorporation, which requires approval by two-thirds of the shareholders.

Either change must be in place before the old stock is cancelled on December 18, 1991. While those options may be of some help in keeping the corporations under Native ownership, they would not ensure continued Native ownership, by any means.

(For more on stock protection, see story on page 3).

If no change is made in ANCSA and if a corporation does not adopt restrictions, many Native shareholders will have to choose between offers of cash and holding on to their stock. If enough shareholders in a given corporation chose the cash, the corporation and its land would no longer be Native.

Although the key issue of 1991 is stock "alienation" – the ability to sell or lose stock – 1991 will also have profound effects on the future of Native land.

Land owned by the Native corporations can be lost in a variety of ways now. It can be sold, leased, exchanged or, in the case of developed land, it can be taken to pay taxes or debts owed. Land can also be lost through adverse possession – if somebody continually trespasses on land and the landowner does nothing to stop it, the landowner can lose the property rights. Land can also be taken by government through eminent domain, although the government must pay for it.

But if enough shareholders sell their stock after 1991, Native land will face an even larger threat, because Natives will have no claim to it and no say in what happens to it.

Two other issues are associated with 1991, as well. They are special benefits for Elders and participation by New Natives, Natives who did not receive stock under the settlement act because they were born after it was passed.

If the Native corporations and their shareholders want to provide special benefits for Elders and if they want to open the way for New Natives to own stock, other than through inheritance, action should be taken before the restricted stock is called in.

After 1991, it will be much more difficult to institute such special provisions for Elders and New Natives.

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Alaska Federation of Natives

411 W. 4th Avenue, Suite 1A
Anchorage, Alaska 99501

This special supplement to the Tundra Times has been prepared by the Alaska Federation of Natives for distribution throughout Alaska's Native community.

Within these pages are articles about each of the issues related to 1991: stock alienation, land protection, New Natives, Elders and the corporate structure.

Other articles address the draft resolutions prepared for the 1984 AFN Convention, interviews with Native leaders, the history of the Alaska Native Claims Settlement Act (ANCSA), major problems in ANCSA, and the work on 1991 done thus far.

This supplement is designed to offer a comprehensive source of information about ANCSA, 1991 and the issues of concern to Alaska Natives. Only with a broad base of information and understanding can the Native community succeed in efforts to the ensure that ANCSA remains a tool that is responsive to Native needs and goals, as determined by Natives, themselves.

Protecting The Land

As 1991 approaches, the overwhelming concern of most Alaska Natives is their continued ownership of Native lands. Because most of the land conveyed to Natives under the Alaska Native Claims Settlement Act (ANCSA) is owned by the Native corporations, if Natives lose control of their corporations they will lose control of the land, too.

However, ANCSA corporation lands have been and are vulnerable to loss, in other ways, from the moment they are conveyed to the corporation. A corporation can sell part of its land, or trade it for other land. Land can also be lost involuntarily in several ways.

Land can be sold against the corporation's will to pay taxes owed by the corporation or to pay the corporation's creditors. It can also be taken by "eminent domain," which is the government's power to take land for a public purpose. However, the landowner must be paid for the land if it is taken under eminent domain.

Land also can be lost through "adverse possession," which means that if someone trespasses on the land for a number of years and the landowner does nothing to stop it, the trespasser can gain ownership rights to the land.

The Congress included several provisions in ANCSA to give some protection to Native corporation land.

Native land that is not developed, leased or pledged – in other words, land which is not used for an economic purpose – is exempt from state and federal taxes for 20 years after the land is conveyed to the corporation.

In 1980, the Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA). Section 906 of ANILCA establishes the Alaska Land Bank Program, which allows every village and regional corporation to put some or all of its land into the land bank.

If the corporation [illegible] but to develop [illegible] the land as long as it remains in the land bank, the land may not be taxed, sold to pay bad debts, or lost to trespassers through adverse possession. However, the land bank does not protect the land from eminent domain.

But there are two disadvantages to the land bank program: It requires the corporation to go through some government red tape to obtain a land bank agreement; and land cannot be developed or leased.

Also, only land owned by village and regional corporations is eligible for the special protections available through the land bank program. Land owned by other Native-controlled organizations, such as IRAs and traditional councils, is not eligible for the land bank.

Pursuant to a resolution passed at the 1983 AFN Convention, AFN studied how Native lands might be better protected from loss. The study looked at how land might be protected by transferring it from the corporation to a different entity.

If a corporation wants to transfer its land to another Native entity, it may do so if two-thirds of its shareholders vote to approve the transfer. Under Alaska law, shareholders who object to the transfer may claim "dissenter's rights" and demand that the corporation buy their stock.

If the land is transferred to a non-profit Native entity, it would be protected from being taken to pay for the corporation's taxes or debts. But transferring the land to a non-profit would not necessarily make it tax-exempt. Nor would that protect the land from being lost through adverse possession or eminent domain.

If a corporation transfers its land to an IRA or traditional village council, the land would not necessarily be protected from taxes, from loss to pay debts, from adverse possession and eminent domain. If land transferred to an IRA

(Continued on Page Twelve)

"What's Wrong With ANCSA?"

From the moment the ink started to dry on President Richard Nixon's signature on the Alaska Native Claims Settlement Act (ANCSA), the people who had fought for ANCSA knew there were problems. Still other problems emerged over the years.

The Congress addressed some of the problems in subsequent amendments to ANCSA, while others have been resolved by the Native corporations, themselves.

For example, as originally written, undeveloped Native corportion lands were exempted from taxes until after 1991. But since the conveyance process has taken so long, Congress amended ANCSA to extend the tax exemption for 20 years after conveyance instead of 20 years after ANCSA was enacted.

Federal agencies' resistance to implementing ANCSA was one of the biggest barriers; Native corporations have had to spend time and money in court, fighting for lands they were entitled to under ANCSA.

Section 7(i) of ANCSA, which requires the regional corporations to share timber and subsurface revenues, posed yet another difficult problem, which has yet to be completely resolved. Although the regional corporations reached agreement about some of the 7(i) questions, there is still conflict over sand and gravel ownership.

There were problems in ANCSA and then there are what one Native leader calls "fatal flaws." The flaws are:

1) ANCSA's treatment of Native land as an economic asset, instead of as the basis of Native culture and survival;

2) ANCSA's division of Native people into two classes: those who received stock under ANCSA and those who didn't because they were born after it was passed;

3) The 1991 provision which opens the door for Natives to lose the benefits of ANCSA – the corporations and the land.

Some people in the Native community today find it easy to blame problems and flaws on the Native leaders who fought for ANCSA. Some say that ANCSA was a "sell out" and that it was a ploy by non-Natives to eventually take control of Native lands and resources.

Yet, testimony of Natives during ANCSA negotiations and recollections since then do not support those accusations. (See "A Look Back," page 8).

ANCSA placed corporate leaders in a difficult position by making land a corporate asset. As an economic asset, the land should be used to produce profits for the corporation. Yet what of its subsistence and cultural value? Native corporation leaders try to balance those interests by using some land for its economic potential and preserving other land for subsistence use.

If the land remains a corporate asset and if Natives lose control of the corporations, the corporations would probably cease to consider subsistence and cultural values in their land-use decisions.

From the studies done so far, it appears the Congress' decision to cut off New Natives – those born after ANCSA was enacted on December 18, 1971 – from receiving stock directly, was an oversight. Congress did not want to create a perpetual enrollment process for subsequent generations of Alaska Natives. But it apparently assumed that Native shareholders would pass ownership and control of the corporations to future generations through inheritance, gifts and stock sales after 1991.

The decision to cut off enrollment has created two classes of Natives. Within many families, older children own stock and younger ones do not. The younger ones may inherit stock but they have no guarantee of ever owning stock or of having a say in how the Native corporation is run and how the land is used.

One of the basic goals of ANCSA was to provide continuing benefits to future generations of Alaska Natives.

But if current fears prove to be true – if shareholders sell or lose their stock in some way – future generations will have no claim to traditional lands, no say in how they are used, and at most, a legacy of cash from the sale of their parents' stock.

The problems [illegible] ANCSA may be clear, but solutions are difficult. While many shareholders believe that protecting the land is more important than anything else, there are others who may object to any change which would reduce the sale value of their stock.

While many shareholders believe that New Natives must be included, others believe that inheritance will take care of the problem.

While some shareholders believe that the corporate system cannot work and should be abandoned, many others believe that it is better to retain the corporate structure instead of starting all over again with something new.

Each possible solution has advantages and disadvantages. Some might be possible under existing federal and state laws, while others would require amendments to ANCSA or the state's corporate laws.

Articles in this supplement explain some of the potential solutions, as presented to AFN in a series of legal papers.

The land. . .

Photo [illegible]

New Natives Dilemna: Fairness or Dilution

When the U.S. Congress decided that only Alaska Natives alive in 1971 would receive cash from the Alaska Native Fund and stock in the Native corporations, it split Alaska Natives into two classes.

Estimates indicate there are now 20,000 Alaska Natives who do not own stock because they were born after the Alaska Native Claims Settlement Act (ANCSA) was enacted. By 1991, the number of excluded Natives may be as high as 40,000.

Those so-called "after-borns," or New Natives, may inherit stock but they cannot claim it as a birthright.

According to testimony before the Alaska Native Review Commission, Congress did not want to create a perpetual enrollment process. The cut-off date of December 18, 1971 –the date ANCSA was enected – apparently was used because it was convenient.

The Congress assumed that Natives born after that would inherit stock and, after December 18, 1991, could receive it as gifts from their parents or buy stock.

Yet there was and is no guarantee that Natives born after December 18, 1971, will own Native stock. Under the existing structure, if they do not own stock, they have no say in how Native lands are used or how the corporations are managed.

For them, ANCSA will be meaningless, if their parents sell the stock or lose it in some way.

Solutions to the problem boil down to a choice between fairness to New Natives and the economic interests of current shareholders.

How will this child participate in ANCSA. . .

If a Native corporation issues stock to New Natives free of charge, the sale value of existing stock will be "diluted," or reduced, because more people would be sharing the same amount of corporate assets.

The only way to maintain the sale value of existing stock would be for the corporation to charge "book value" (a price determined by dividing the amount of assets by the total number of shares) for the New Natives' stock. But then, the New Native would have to have the money to buy it, even though the original shareholders paid nothing for their stock.

The Native corporations are subject to state and federal corporate laws. Those laws raise three legal issues related to stock offerings to New Natives.

The existing shareholders in a typical (non-Native) corporation sometimes have "pre-emptive rights." That means that if a corporation offers new stock for sale, the existing shareholders have the right to buy new stock at the same price it is being offered to others.

Pre-emptive rights could be a burden to a Native corporation which wanted to offer stock to New Natives, but it is much less of a problem than it could be because state corporate laws allow corporations to eliminate pre-emptive rights.

The second legal issue is "adequacy of consideration." That means that the corporation cannot give stock without charging at least a nominal, or small, fee for it.

The third legal issue is "limitation of purchasers." Normally, a corporation would offer stock to the general public. But the Native corporation would be offering stock only to New Natives and it probably would limit the number of shares each New Native could receive or buy.

Other, non-Native corporations have put restrictions on who can purchase stock, but none has made the kind of limitations – based on race and number of shares – which the Native corporations would be considering. It is not known whether such limitations would be challenged and whether such a challenge would be successful.

Native corporations which wish to offer stock to New Natives could do so, but without a change in state law or ANCSA, the corporation would be more vulnerable to a legal challenge.

Legislation to permit corporations to offer stock to New Natives would not guarantee protection against legal challenge, but it would reduce the risk.

Stock alienation - protection or profit?

The corporate structure used to implement the Alaska Native Claims Settlement Act (ANCSA) and stock alienation after 1991 are closely tied together.

ANCSA was enacted with several main goals: to settle Native land claims, to provide Alaska Natives with the tools to control and improve their economic status, and to set up a system to provide continuing benefits to future generations of Natives.

A corporate structure, with Natives as the corporate shareholders, was used to implement the settlement. The Congress' underlying assumption and expectations appear to have been that ANCSA, through the Native corporations, eventually would merge Alaska Natives into the American social and economic mainstream.

But that would take time, so the Congress put a 20-year restriction on Native stock to give the corporations time to organize and d[illegible] of the threat of takeover by non-Natives. Under the stock restriction, - shareholders cannot sell or otherwise transfer ("alienate") their stock until after December 18, 1991.

There are some exceptions to the ban on stock alienation. Stock can be inherited when the shareholder dies and it can be taken by court order in a separation or divorce settlement or to pay child support with the dividends.

Although ANCSA stock was to be owned only by Natives, non-Natives may own stock through inheritance or divorce settlements, but non-Native shareholders cannot vote their stock until after 1991.

The original wording of ANCSA said Native corporations must call in the stock in 1991 and reissue new, unrestricted stock on January 1, 1992. But the wording was changed and expanded in an amendment included in the 1980 Alaska National Interest Lands Conservation Act (ANILCA, also known as "d-2" or the Alaska Lands Act).

The new wording says the old stock will be cancelled and new stock issued on Dec. 18, 1991. The new stock will be subject only to restrictions imposed by the corporation, itself. It specifically described two restrictions that corporations can impose through amendments to their articles of incorporation. Any such amendment requires approval by two-thirds of the corporate shareholders and the change must be made before the old stock is called in.

The two restrictions authorized in ANILCA are

1) The corporation may let only Native shareholders or descendants of Natives vote their stock, even after 1991. Non-Natives could own stock but would not have voting rights.

2) The corporation may require that any stock a Native wants to sell must be offered first to the corpor[illegible] the corporation and the shareholder's immediate family. This "right of first-refusal" would give the corporation or the shareholder's family an opportunity to purchase the stock and thus keep it in Native ownership.

If a corporation adopts the first option, (to continue the ban on non-Natives voting their stock), non-Natives will be less inclined to buy stock since they would not have a voice in the corporation's decisions and activities. But that restriction would not prevent non-Natives from buying stock.

The second option, the right of first-refusal, would help to keep the stock in Native ownership, but only if the corporation or the shareholder's family have enough money to buy the stock being sold.

While corporations might have enough money to buy stock from some of their shareholders, not even the [illegible] financially successful of [illegible] would be able to handl[illegible] deluge of stock if many shareholders want to sell.

Additional protections against loss of stock to non-Natives would require changes in the corporate structure and probably amendments to ANCSA, as well.

Although the sale of Native stock is a major concern, there are ways Natives can lose their stock after Dec. 18, 1991 without voluntarily selling it. For example, a court could take the stock as payment for a bad debt or taxes owed. If a shareholder sold any of his stock, he would be taxed on the money he received for it. If he couldn't pay that tax, his remaining stock could be taken to pay the tax.

Those problems can only be solved by amending ANCSA to put a total ban on stock alienation to non-Natives.

The prospect of Native shareholders willingly selling their

Co[illegible] Pag[illegible]

The corporate structure – does it fit?

When Native leaders were negotiating with the Congress and the state for ANCSA, most of the attention was focused on how much land Natives would receive title to and the locations of the land selections.

The second priority was how much money the Natives would receive in payment for lands given up under ANCSA. But the decision about how ANCSA would be implemented – the structure – was not totally ignored in the negotiations. Different types of implementing structures were considered.

Both the Native community and the Congress saw ANCSA as an opportunity for Alaska Natives to improve their economic and social well-being. It was strictly a land settlement, but even so, it was seen as a path toward economic development, increased employment opportunities and improvements in the living standards of Native communities.

All of the parties involved wanted to make ANCSA a meaningful settlement, with lasting impacts and benefits that would continue through subsequent generations of Alaska Natives.

Most of the earlier land settlements with tribes in the lower 48 had involved reservation systems and per capita distributions; none had been very successful and many were seen as dismal failures.

Those past failures, combined with the political atmosphere of the time – the War on Poverty and economic opportunity as the key to minority problems – made the Congress eager to try something different in Alaska.

Earlier drafts of ANCSA had different implementing structures. One proposal would have created two statewide organizations: a for-profit corporation and a non-profit entity to address social problems. Another proposal would have allowed IRAs to own and manage the ANCSA assets which went to villages.

What emerged, of course, was a system of 12 regional corporations, parallel to traditional geographic boundaries of the major Native groups, and some 200 village corporations which had the option of being for-profit or non-profit. None chose to be non-profit.

If the Native corporations and their shareholders want to change the corporate structure, they must either do so within the boundaries of state law or seek changes in state or federal law.

* * *

The Native corporations organized under ANCSA are quite different from the "typical" American corporation. The business decisions of a "typical" corporation are based only on the bottom line: profits.

Shareholders in a typical corporation expect only two things – dividends and increases in the value of their stock. They do not want their corporation to spend money on scholarship programs or benefits for Elders or job banks. They do not want the corporation to make a special effort to employ shareholders.

Native corporations, on the other hand, offer such shareholder services and their business decisions take into account the needs of their shareholders and non-cash values of the land they own. Native corporations must make money to survive. But they must constantly balance profits against the needs and desires of their shareholders; shareholders who expect more than just dividends.

The "typical" corporate values – individual gain and a profit motive which excludes other, non-economic benefits – are foreign and sometimes contrary to traditional Native values. Natives traditionally value the well-being of the community, sharing, and respect for others, especially Edlers.

Some Alaska Natives want to eliminate the corporate system because it does not reflect Native values, especially the traditional Native respect and attitude toward the land.

At the 1983 AFN Convention, delegates told AFN to study the legal and practical implications of alternatives to the corporate structure. The study identified some of the alternatives and the legal questions that would be raised by converting to them.

Conversion of a Native corporation, or its assets, to a tribal entity – such as an IRA or traditional village council – would raise a fundamental policy question. In ANCSA, the Congress made it very clear that ANCSA was not to be used to create any permanent, racially-defined institutions. But ANCSA did not repeal the application of the Indian Reorganization Act in Alaska. The Indian Reorganization Act affirms the rights and powers of Native groups, which are racially-defined institutions, so there is a contradiction between ANCSA and the IRA.

The political atmosphere right now, both in Washington and in Alaska, is unsympathetic to the resurgence of tribal structures.

If that unfriendly political atmosphere were to change and if the Congress were willing to see the corporations or their assets converted to [illegible] entities, other questions would remain because the legal status of IRA lands in Alaska is very cloudy. (For more on land trans-

(Continued on Page Twelve)

Elders

Dora and Jerry Kaloke (Brevig Mission) at 1983 Bering Straits Elders Conference. Photo by Lora Kosell

One issue is associated with 1991 even though it is not directly related to stock alienation and land protection. The issue is a question: Can Native corporations provide special benefits, in the form of cash payments, to Native Elders?

In the past there was little need to be concerned about the welfare of Elders. They were revered and respected by their families and their communities and their needs were met through the traditional sharing of village resources.

As Native villages turn, at least inpart, to cash-based economies, there is less certainty that Elders' needs will be met. As shareholders in the Native corporations, they may receive dividends, but many people are worried that Elders will have passed on by the time the corporations are successful enough to distribute significant dividends.

In response to these concerns, delegates at the 1983 AFN Convention passed Special Resolution 83-06, which directed AFN to study whether and how the Native corporations can provide benefits to Elders.

Several village corporations in the Bering Straits Region have instituted life insurance annuity programs which allow them to distribute monthly payments to their Elders. However, research on the issue has shown that a Native corporation does not need to set up such a program in order to provide cash benefits to its Elders.

A corporation may offer cash benefits to a special class of shareholders – in this case, Elders – by amending its corporate articles. Such an amendment requires a vote of the shareholders and two-thirds of those voting must approve the amendment.

However, such cash benefits would not be allowed if by doing so, the corporation would become insolvent. In other words, the corporation must have enough money to continue operating and provide cash payments to Elders.

Even if a corporation does provide cash payments to Elders, a problem arises because those payments are considered income. By receiving a monthly payment from his corporation, a Native Elder could lose benefits he [illegible] receives from the state or federal government. For example, he may receive food stamps and the amount he receives is determined by his income. If his income is raised by the corporation's cash payment, he might receive fewer food stamps or none at all.

Because of that problem, the 1983 Convention Resolution directs AFN to seek legislation so that any such corporate benefit to Elders would not be considered as "income" for the purposes of eligibility for federal or state assistance programs. If that effort is successful, Elders would not lose assistance just because they receive cash benefits from their corporation.

However, it appears very unlikely that the Congress would agree to exempt cash payments from eligibility determinations, because the U.S. Treasury Department would strongly oppose it.

But there are other ways, besides giving cash payments, that corporations can help their Elders. Indeed, several non-cash benefits are being provided now.

At least five regional corporations sponsor Elders conferences and [illegible] travel [illegible] for the [illegible] attending. One regional corporation, NANA, also pays travel expenses for Elders to participate in other special events.

Another regional corporation, Cook Inlet Region, Inc., aided construction of low-cost housing for Elders by selling land to the Cook Inlet Housing Authority, which then built the housing with a grant from the U.S. Department of Housing and Urban Development (HUD).

However, the low-cost housing is open to non-Native elderly as well as Native Elders because HUD grants may not be limited to [illegible]

1991 Resolutions address issues from Stock Ali

At AFN's July retreat in Dillingham, the following 1991 resolutions were drafted for presentation at the annual convention in October:

84-01

WHEREAS, each Native region and village is entitled to consider and decide its own destiny; and

WHEREAS, the decisions of each village and region on the 1991 issues affect other regions, villages, and all other Natives; and

WHEREAS, the decisions of each corporation affect other corporations and individuals and each corporation should consider the views of other organizations and the impact of choices on other corporations.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the concept that whenever a corporation is given an option with regard to a concept, that option shall be exercised by a vote of the corporation's shareholders.

BE IT FURTHER RESOLVED, that the Boards of Directors of each corporation shall establish the minimum shareholder vote required to exercise the option but the minimum vote shall not be less than the majority of a quorum of shareholders. No dissenter's rights to stock repurchase by the corporation shall be available if a corporation exercises an option.

Explanation: This resolution applies to all but one of the others. Whenever an option is available, the decision to do it must be made by a vote of the shareholders. The corporation's board of directors decides what percentage of shareholder approval is required, but the percentage must be at least a majority of a quorum, as set in the corporation's articles or bylaws.

The "dissenter's rights" clause refers to a legal requirement: In certain situations, such as a merger or a major transfer of assets, a shareholder can demand that the corporation buy his stock if he opposes the corporation's action. That could impose a severe hardship on many corporations which don't have enough money to buy out the stock of the minority shareholders. The clause eliminates a dissenter's right to demand that the corporations buy his stock.

There is a precedent for eliminating dissenter's rights. A 1976 amendment to ANCSA did so for Native corporation mergers whch take place on or before Dec. 18, 1991.

84-02

WHEREAS, the existing provisions of ANCSA require that the Native corporations issue new stock in 1991 without the absolute prohibition on alienation that is set out in ANCSA; and

WHEREAS, ANCSA permits Native corporations to impose restrictions on the stock which must be issued in 1991; and

WHEREAS, the type of restriction on ANCSA stock after 1991 will have a significant effect on the future of the settlement; and

WHEREAS, the Natives must control their own future with respect to the settlement.

NOW THEREFORE BE IT RESOLVED, by the Alaska Federation of Native in convention assembled that the convention endorses the concept that ANCSA should be amended to eliminate the provision for allowing stock alienaton after 1991, but that each corporation has the option to permit alienation of stock under the current ANCSA provision.

BE IT FURTHER RESOLVED, that this option may be exercised once prior to December 18, 1991 and thereafter as prescribed by each corporation's bylaws.

Explanation: By eliminating the 1991 provision, the restrictions against selling stock would remain in place. But if a corporation's shareholders wanted to be able to sell their stock after 1991, they could vote to do so. A vote to allow stock alienation could be taken once before Dec. 18, 1991. After 1991, votes to allow stock alienation could be held according to the individual corporation's articles and by-laws.

If a corporation did nothing, stock would not be transferable.

84-03

WHEREAS, many ANCSA corporations may choose to extend stock inalienability after 1991 or to otherwise restrict stock; and

WHEREAS, some corporations may wish to provide for shareholders who do not wish to own restricted stock by purchasing their shares before 1991 or during any subsequent period of stock inalienability.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the concept that ANCSA should be amended to allow corporations to purchase their own shares before 1991 and during any subsequent period of stock inalienability.

Explanation: Even if stock cannot be sold or transferred, a corporation would be allowed to buy stock from its shareholders who want to sell. That would remove some of the pressure on the corporation from shareholders who want to be able to sell their stock.

84-04

WHEREAS, Alaska Natives have existed as a distinct and unique people from time immemorial and will continue to exist; and

WHEREAS, Congress in passing ANCSA picked an arbitrary single date of 1971 to determine who would be entitled to participate in the Alaska Native settlement; and

WHEREAS, it is not acceptable to Natives to create or continue different classes of Natives and exclude those born after December 18, 1971 or omitted in the original enrolment from the settlement; and

WHEREAS, the structure established in the Alaska Native Claims Settlement Act for implementing that Act does not provide an opportunity to provide Alaska Native Elders special benefits which reflect their special contributions; and

WHEREAS, corporations may desire to issue special forms of stock to Native Elders; and

WHEREAS, inclusion of New Natives in the settlement structue should not affect revenue sharing under Section 7 of ANCSA.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the concept that ANCSA should be amended to give each corporation the option of offering additional stock to Natives, leaving the price, if any, up to the corporation and eliminating any liability for issuing stock at low or no cost.

Explanation: The ability to offer additional stock to Natives and special classes of stock addresses New Natives and Elders. It also would allow corporations to offer stock to Natives who were alive in 1971, but did not receive corporation stock for one reason or another.

Each corporation would decide whether it wanted to offer such stock and it would set the price, if any, to be charged for the stock.

For example, if the shareholders of Corporation A voted to give shares to every Native born after Dec. 18, 1971, the corporation could do that. If the shareholders in Corporation B wanted to offer stock, but didn't want to "dilute" (reduce) the economic value of their own stock, they could vote to charge full price for the stock.

Under existing law, shareholders in Corporation A who voted against giving shares at no cost might sue the corporation and claim it had diluted the value of their stock. The resolution protects the corporation by eliminating that potential liability.

It also freezes the formula for distribution of 7(i) revenues so that the formula remains regardless of changes in the number of shareholders.

The resolution would allow corporations to distribute special benefits to Elders by creating special stock for them. The special class of stock could carry guaranteed dividends, for example.

84-05

WHEREAS, ANCSA currently permits dilution of Native ownership of ANCSA corporations through inheritance of shares by non-Natives; and

WHEREAS, this provision may be inconsistent with the decisions of some corporations on future transfer of stock to non-Natives.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the

Continued [illegible]

King Island Dancers symbols of life, tradition and values

Photo by [illegible]

nation to Benefits for Elders and New Natives

concept that ANCSA should be amended to prohibit transfer of stock by any means to non-Natives who are not descendents of Natives, during any period in which a corporation's stock is subject to inalienability restrictions.

Explanation: Although shareholders cannot sell or otherwise transfer their stock until after December 18, 1991, stock is going now to non-Natives in several ways. Non-Natives may inherit stock, or it may be taken to pay child support (from the stock dividends) or a court may award the stock to a non-Native spouse as part of a divorce settlement.

Under existing law, after 1991, stock can be taken by a court to pay debts of any kind.

This resolution would plug the current loopholes which allow non-Natives to own stock and it would prevent stock from being transferred to non-Natives in any way, as long as stock is restricted.

The resolution would allow descendents of Natives, regardless of their blood quantum, to inherit stock or to receive it as part of a divorce settlement. For example, if Joe Wassilie is 3/16 Native, he did not receive stock under ANCSA. Even though he is not Native according to the definition in ANCSA, he would still be able to inherit stock.

84-06

WHEREAS, descendents of Native shareholders in many cases may have less than one-fourth Native blood and therefore not be a "Native" as defined in ANCSA; and

WHEREAS, those individuals may still be regarded as Natives by many ANCSA corporations and should be able to vote any shares they have acquired; and

WHEREAS, ANCSA presently allows corporations to restrict voting rights only to Natives as defined in ANCSA.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the concept that ANCSA should be amended to give each corporation the option of granting voting rights to shareholders who are descendents of Natives.

Explanation: This resolution addresses a problem in the ANCSA definition of "Native." To receive ANCSA benefits, Natives had to prove they had at least one-quarter Native blood. If a Native could not show documentation of blood quantum, he could be eligible if his Native community considered him a member.

Most people who were descendents of Natives, but had less than one-quarter Native blood, did not receive benefits from ANCSA. Since the stock can be willed to anyone, they can receive stock through inheritance but they cannot vote the stock until after December 18, 1991.

The resolution would allow corporations to give those Native descendents voting righs even though ANCSA now defines them as non-Natives.

84-07

WHEREAS, the relationship of Alaska Natives to their land retained pursuant to the Alaska Native Claims Settlement Act is the relationship which is fundamental to the continuation of Alaska Native culture and to the economic and social well-being of Alaska Native People; and

WHEREAS, provisions of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act establish mechanisms to prevent Native lands from being transferred out of Native ownership, and

WHEREAS, these mechanisms are not sufficient to protect Native lands from being transferred out of Native ownership after 1991.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Native in convention assembled endorses the concept that all land held by ANCSA corporations shall be deemed deposited in the ANILCA Land Bank. Land can be transferred to a Native organization through a shareholder vote without dissenter's rights to stock repurchase by the corporation and with ANILCA Land Bank protections.

Explanation: Existing law provides some limited protection against loss of undeveloped Native lands. Undeveloped,unleased land is tax-exempt for 20 years from the date it is conveyed to the Native corporation.

Additional protections are available under the Alaska Land Bank Program. The program allows every village and regional corporation to put some or all of its land into the land bank. If the corporation agrees not to develop, mortgage or lease the land, as long as it remains in the land bank, the land may not be taxed, sold to pay bad debts, or lost to trespassers through adverse possession.

Developed land can be put into the land bank, too, but only through negotiations with the Department of Interior. However, developed land would not receive the tax protection.

The resolution would do three things. It would make the Land Bank protections automatic, to eliminate the bureaucratic paperwork now required; it would apply the protections to all A[illegible] and it [illegible]ow [illegible]tion to [illegible] its [illegible] another Native organization – such as a non-profit or an IRA – without losing the protections.

The resolution would also eliminate dissenter's rights to demand that the corporation buy their stock if the corporation did transfer its land to another Native entity.

84-08

WHEREAS, Congress decided to use Western business corporations as the vehicle for implementing the Alaska Native Claims Settlement; and

WHEREAS, such corporations are foreign to Native culture and in many ways inconsistent with Native values; and

WHEREAS, such corporations may not be the best vehicle for implementing the settlement in the future; and

WHEREAS, Alaska Natives should not confuse their Native identity, culture, and heritage with the tools provided by ANCSA corporations, and should be prepared to revise or discard the structure of those corporations.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the concept that ANCSA should be amended to authorize the transfer of corporate assets to a new entity to be composed in the future only of Natives and their descendents, without stock, that can make distributions (excluding land) to individual members. All existing shareholders would be given a lifetime, nontransferable membership. No dissenter's rights to stock repurchase by the corporation would be permitted on the conversion.

Explanation: The last resolution would allow Native corporations to transfer part or all of their land and assets to a new entity which has members but no stock.

The new entity would eventually be composed only of Natives and their descendents.

To minimize the risk of a successful legal challenge by non-Native shareholders, those non-Native shareholders would be given lifetime membership in the new entity, but their membership would not be transferable. All memberships would expire when the member dies, and only Natives would become members in the future.

The new entity could be an IRA or a non-profit or a new type of organization.

The new entity would be able to make distributions to its members but the entity could not distribute land free of charge.

Land is excluded for two reasons: Free distributions of land to individual members would be contrary to the traditional, community ownership of land. Furthermore, if the entity gave all its land away t[illegible] genera[illegible]ld not be assured use of the land.

Willie Hensley and Robert Newlin, of NANA, and Marlene Johnson of Sealaska at the July retreat in Kotzebue.

Questions and answers

Question: What happens if the convention delegates pass these resolutions?

Answer: The resolutions are policy statements to guide the next phase of work. If the convention delegates pass the resolutions, AFN will study them in even more detail, circulate them for discussion and further refine the concepts.

In early April of 1985, AFN will hold a special, mid-year convention to formally ratify the concepts. Between November and April, AFN will conduct a major information drive in regions and villages to ensure that the Native community understands the concepts. There also may be another retreat of Native leadership during that period.

The resolutions submitted to the October convention will not amend ANCSA. They will, however set the tone for proposed legislation eventually submitted to the Congress. That will probably happen in mid 1985. If past experience is any indication, it would probably take two to four years to push the legislation through Congress.

Question: How would Native land be protected under these proposals?

Answer: In seveal ways. If stock is not alienable, Natives won't lose control of the land by losing their stock. Land would be protected from other threats, too.

For example, if a corporation does not put land into the Land Bank, it can be taken by a court to pay taxes the corporation owes or to cover a bad debt. The proposal in Resolution No. 7 would automatical extend the Land Bank protection to all land owned by Native corporations.

Questions: But what if my corporation wanted to use its and to back a loan? If the bank had no way of taking the land, it would not approve the loan.

Answer: If a corporation wanted to use its land that way, it could voluntarily give up the protection by "withdrawing" the land from the Land Bank.

Question: Why are there so many options here. Shouldn't we just ask Congress to my that stock can not be sold, period?

Answer: Many people would like to do that, but others feel that shareholders should be able to sell if they want to and that the decision should be left to the shareholders of each village and regional corporation. If a corporation wants to make its stock alienable, the shareholders must vote to do that.

Question: I thought that it was illegal for my corporation to provide cash benefits to our Elders. That's what we were told by our attorney.

Answer Although several corporations were given the same advice, AFN's attorney found that corporations can give cash benefits to Elders if the share-

(Continued on Page Twelve)

Then and Now: Three leaders evaluate ANCSA

During the 1991 retreat in September, AFN interviewed three of the participants who were active in the ANCSA effort about their perspectives, then and now.

Byron Mallot, Al Ketzler, Sr. and Willie Hensley were among the key figures in the push for a Native land settlement. They have been active in the implementation of ANCSA, in their respective corporations, and in the work on 1991.

The questions and their answers are below.

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Question: If you knew then what you know now about how ANCSA works, would you have tried to do things differently?

Byron Mallott: Yes, I think a number of features could have been strengthened. I think land transfer should have been more automatic, and it should have happened much faster. The same holds for distributions of money from the Alaska Native fund.

I think ANCSA, at the outset, should have made a special provision for Elders, and the framers of it should have recognized that the inherited stock would not necessarily flow directly to the descendents. The issue of those born after 1971 should have been resolved within ANCSA, instead of leaving it to the corporation to resolve.

I think there should have been a feature built into ANCSA to require and fund shareholder information programs at the outset, so that Natives could learn early on about the complexities and details of the act.

The 20-year provision on stock alienation is probably too short. I think the per capita distribution should have been more than it was; maybe 25 percent of the proceeds instead of 10 percent.

A higher cash distribution might have prevented the problems of unmet expectations and people's feelings that they haven't benefitted directly from the act. A higher per capita distribution could still have left the corporations with sufficient capital to be viable.

The corporate structure turned out to be much more complex and difficult to deal with than anyone dreamed of. Virtually no one in the leadership had a sense of what for-profit corporations were, especially in the context of land ownership.

Al Ketzler, Sr.: If I had known as much about the business world then, I would have opted for some different form for the settlement to take. What I would rather see is a membership organization where, if you are a Native, you're in and if you die, you're out.

There would be protection, especially for Indians still living off the land. What you see now is very few people benefitting from the act. The only real benefits passed down are to the people who have jobs in the corporations.

I'm all for taking the land out and putting it in another corporation and giving the land some kind of protection so the future generations can have some base to work with.

Willie Hensley: There are lots of things I would change if we had the power. The changes would go to the structure, the relationship between the villages and what you might call the tribes. I hate to call those groups "corporations." We are not involved with the concept of corporations despite the fact that we work with it.

Byron Mallott

I would have spent more time on the groups, the tribal groups, the broad category of Native people – north and south Eskimos. There was a hit-and-miss job of carving up the state. The truth is that Congress was very much against a form of tribal government and having it in any form. I know people identify with the villages, but in order to survive you've got to have a tribal conscience which helps the group to survive and deal with the rest of the world.

What I'm saying is we have no – or very little – repository for what I call the Native spirit, the tribal spirit, because the institutions we deal with are western. Congress made no effort to deal with our culture, our identity needs.

On the other hand, it has always been my feeling that this is an area where it should not matter. Because it is the responsibility of the leadership to provide for the survival and accomodate ethnic and cultural needs. The sad thing is that the corporate institution narrowed the focus of the leadership and perception of tribal members.

Question: Could ANCSA have been different?

Mallot: One almost had to have been there at the time to understand the circumstances. There was a tight time frame. There was much movement on the act, because of development at Prudhoe Bay and the effort to obtain rights-of-way for the Trans Alaska Pipeline. It brought juxtaposed interests together. The state had an economic interest. The oil industry and the federal government did, too.

All of the interests were arrayed along side Natives, for the purpose of achieving a settlement. There was a strong recognition that the claims had to be dealt with before Alaska development could proceed.

Those were some of the circumstances of the time, but there were also the circumstances of the players. We had a compassionate Secretary of Interior in Morris Udall and an Alaskan who succeeded him. A series of capable people focused on the issue.

The question is really, could that whole chapter of events and circumstances been replicated at any other time? I'm not sure. If one of the parties had been intransigent, then realistically, the settlement would have been imposed on Natives, without their active participation. It would not have been anywhere near as definite as it was and it's likely that what we would have today would be involved in lititgation.

That the Natives were able, within constraints, to maximize what they achieved – that's the miracle of ANCSA – that the Natives were able to achieve so much.

Ketzler: I'm not sure. the impetus we had at the time was to do our own thing. We were dealing with people we had – cunsultants, attorneys. The corporation idea evolved. Back then, we didn't know about business. It sounded good but the concept was placed on a Native community where it was totally foreign to the culture.

Hensley: It was a hectic period. It is a darn near miracle this got off the ground. Once we created the wave, we had to stay on top. It was fast-moving and if we hadn't stayed on top we would have gone under.

Al Ketzler, Sr.

We were ill-prepared for what occured, the rapidity and the lack of resources.

We dealt with the western influence and mostly, we tried to do it in an acceptable fashion. We tried to work within the system and we found the system was responsive. Not in every detail, but then you never get all of what you want.

Question: What would you like to see happen regarding 1991? What do you think will happen?

Mallott: Whatever is done has to take into consideration the view that the land should be maintained in Native ownership in perpetuity. Whatever accord is reached has to deal with that expectation of Natives. It is not a recent thought. It flowed from the first conversation about ANCSA.

Another issue is finding ways within the competitive environment of today to make Native corporations viable. Not to gain special advantages, but to look at those things that make us unique and combine them, balance them with features that make it economically successful in the business world.

Ketzler: I hope to go for resolution No. 7 (the 1991 resolution on land protection, drafted at the retreat) and I think it will have a chance to pass. I would be willing at this point to take the land out of the corporation and let the corporation boards play with the other assets.

Hensley: I would like people to realize that 1991 is just a date. The corporate assets are significant but they are not all-important. Maintaining the tribal spirit and culture is what it was about in the beginning and in my opinion, that's what it is still about.

Also, we have to recognize that we have to use everything to survive in the social, political and economic system. If we don't have a strong tribal spirit, we'll be dead. If we don't have that spirit, it won't matter if we lose the money.

Question: People have talked a lot about the expectations that Alaska Natives had about ANCSA; that maybe they were not realistic. What do you expect from ANCSA and from the corporations – assuming the basic structure remains the same – in the near and long-term future?

Mallott: We were realistic at the time but ANCSA was not like anything the Native people had ever experienced.

They wanted to control their own destiny, to their own advantage. Their lifestyle and way of life was tied to the land.

In reality, the settlement was different. It gave the land to the corporations, whose responsibility as landowners is much different than most Natives realize.

In the short-term, I think there are more rough times ahead for the Native corporations because of the economic climate in which they were formed. The Native corporations were up and running as business institutions when the world was suffering the greatest economic recession since the Depression of the 1930s.

Most of the Native shareholders took the ANCSA goals – in terms of what the corporations would do – very minority group which keeps its that the corporations transferred assets to shareholders when it would have been more productive to keep that capital for investment in the business. As a result of that, the Native corporations, as business institutions, are in a period of retrenchment, looking at the balance sheet, and determining what assets they should and can keep in the long [illegible]

My hope is [illegible] Native corporations give a long-term gain to the Native people – that's economic strength. It's highly important to the long-term survival of any minority. A minority groups which keep its separate identity must own or control institutions to make them economically powerful. Then they can influence public policy, social policy and business policy.

Ketzler: My main interest is my home village corporation and all I hope is that it can stay afloat until we have some other mechanism to protect the land. The village corporations are in the same place as the regional corporations, as far as land loss.

Willie Hensley

Hensley: My vision was the unrealistic hope that we could secure our borders of NANA and have control of the area on which we all lived, in a way that was not too impacted by change. I hoped we would wend our way to the 20th century at our own pace without being pressured by forces we couldn't control.

The corporations are not the first time that we have been hit on a massive scale. Our people have been hit by the missionaries and government and change enforced through psychological means. A little horde of westerners took control of our people's minds.

We thought maybe it's not necessarily bad – there's education, for example – but it enforced a dying of the spirit and the culture. The culture enforces a sense of self-identity and a place in the world and control through small values. When those are obliterated, you've got nothing.

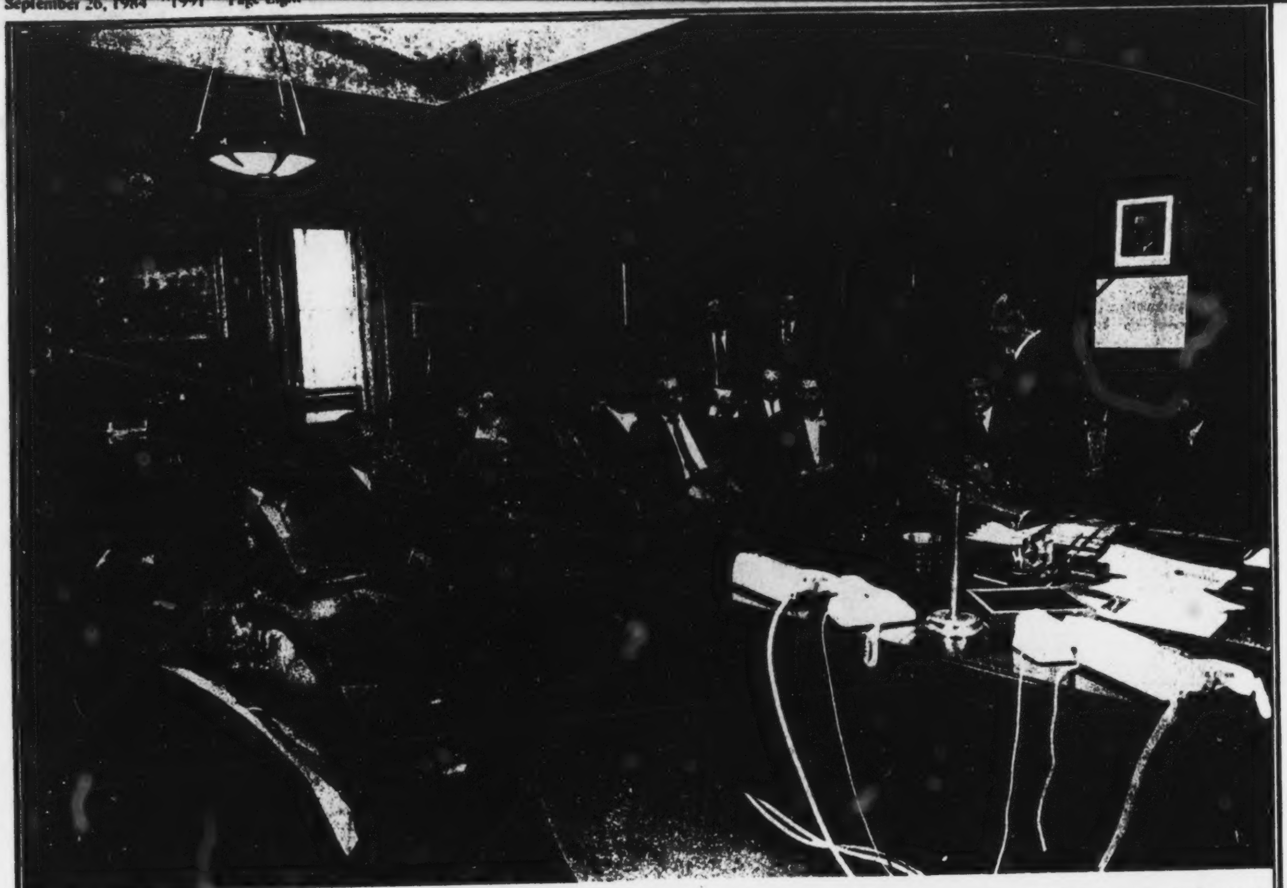
The arrival of the corporations gave us another thing to contend with, to understand. Our people have been flexible and have taken control of western institutions and mastered them and made them work.

I'm optimistic for the future, but the real challenge isn't in the economic or political arena, it's in the internal arena. We have to reach for our tribal roots.

Question: What does ANCSA mean to you?

Mallott: ANCSA was either a one-time opportunity which, more than anything else, gave Native people certain material assets with which they can either determine and establish [illegible] own [illegible] or, it is [illegible]

(Continued on Page Nine)



Meeting after meeting. . . In 1970, AFN representatives met with then Interior Secretary Wally Hickel. Photo courtesy of U.S. Department of Interior

A look back: How the settlement came about

Where did the Alaska Native Claims Settlement Act (ANCSA) come from? And why did it come out the way it did?

Books are being written right now to try to answer those questions, but based on discussions and testimony at the Alaska Native Review Commission's Roundtable Hearings in February and March of 1984, comments by attornies who worked on ANCSA, and other research, the following picture emerges.

••••

The goals of Alaska Natives in the ANCSA movement were clear and straightforward. Although there were aspirations and expectations about what ANCSA would do, the goals boiled down to a single issue: land.

"*We are essentially a people to whom land comes first. We are its children; we have emotional ties to it that we can never forget, even down to the generations that no longer live in the old way. It is a basic part of our identity -- it makes us feel who we are and without it we have been cut off and bewildered.*" Al Ketzler, Sr. in testimony given in February, 1968.

"*Your grandfathers and mine left this land to us in the only kind of deed they knew. . .by word of mouth and our continued possession. Among our people this deed was honored just as much as if it was written and signed by the President of the United States. Until recent years, a man's honor was the only deed necessary. Now, things have changed. We need a legal title to our land if we are to hold it.*" Al Ketzler, Sr. in "Alaska Native Land Claims."

Alaska Natives wanted to protect traditional lands to carry on with the subsistence way of life, the essence of Native life in Alaska for centuries. They wanted to stop the encroachment on those lands by non-Natives in general, but especially by the State of Alaska as it selected lands under its statehood entitlement. They wanted cash compensation for lands previously lost or given up under the settlement. And they wanted the opportunity to improve the living standards of their people.

Certainly, those desires were not new. Alaska Natives had been trying for years to have the Congress fulfill its intention -- stated repeatedly since the 1867 Treaty of Cession with Russian -- of settling Native land claims.

There was no question of the validity of those claims. Congress had said, again repeatedly, that those claims were valid because of Natives' continued use and occupancy of Alaska.

Such land claims had been settled in the lower 48 through treaties and creation of reservations: That didn't happen in Alaska because there wasn't cause or really opportunity.

Treaties in the lower 48 generally were the result of conflicts between Indian tribes and the westward expansion of European settlers. But in Alaska, the encroachment of westerners (first Russian, then Americans) hadn't escalated to the kind of full-scale conflicts that had led to treaties in the lower 48.

Even if there had been a need for a treaty, the period of time in which one could have been implemented was short, because four years after the Treaty of Cession with Russia, the President's treaty-making authority was abolished.

The impetus for a Native land settlement in Alaska escalated after the Statehood Act. Alaska Natives were rightfully worried that the state's land selections would take priority over theirs and that traditional Native lands would be lost to the state. And as early as 1962, members of Congress began talking about a Native settlement because they saw the uncertainty over the status of Native lands as an impediment to economic development in Alaska.

Various Native groups had been trying for years to get the land question settled -- through the courts and through the federal government. Some of those efforts were successful; some were not.

Although Congress does appear to have had the best of intentions in ANCSA, the issue of "fairness" to Alaska Natives was not the only motivation behind ANCSA. In 1966, the settlement of Native land claims became the key that would both open the flow of Prudhoe Bay oil to an energy-hungry coutry and unlock a general push toward development in Alaska.

Alaska Native land claims were elevated to that position by the 1966 decision by Stewart Udall, then U.S. Secretary of the Interior. In response to complaints filed by Native groups, Udall froze further state land selections and construction of the oil pipeline. Nothing would happen on either front until the Native land question was settled.

Alaska Natives wanted their land and the opportunity to participate in the social, economic and political development of the state.

The State of Alaska wanted to proceed with its land selections and it wanted to begin the process of developing the state's promising resource potential.

Oil companies wanted a transportation corridor through the state so they could begin pumping Prudhoe [illegible] an[illegible] free port.

The Congress wanted all of it -- and more.

The Congress, like everybody else in America, was still caught up in the attitudes and atmosphere of President Johnson's "Great Society," the War on Poverty and economic opportunity.

The way to the American Dream was economic development, equal opportunity and minority enterprise. Those were the cures for the plight of disadvantaged minorities.

"*It (the mid 1960s) was a time of hope and expectation, a time when federal policy had come to a point where it seemed to be responsive to the concerns and the aspirations of minority people and the economically disadvantaged in this country. . .It was a time in which the social aspirations of a people seemed to have some opportunities for meaningful results. . .*" Byron Mallott, Alaska Native Review Commission.

That political and social atmosphere meshed with the tide, at that time, of United States Indian policies to produce the structure of the Alaska Native Claims Settlement Act.

U.S. Indian policies have been compared to a pendulum, which swings back and forth from tribalism to termination. In its pro-tribal phases, the federal government recognizes, respects [illegible] en[illegible] tribal [illegible]tures, [illegible]ues [illegible]

(Continued on Page Nine)

ANCSA already amended six times since '71

The effort to amend ANCSA is not new. Since the Congress enacted ANCSA in 1971, it has gone back six times to make changes in the law. That does not ensure that the Congress will approve any and all amendments proposed, but the history does illustrate that the Congress has been amenable to making changes.

Some of the amendments have been mainly technical, while others have been lengthy and extensive. The following is a chronological listing of the ANCSA amendments, so far.

1973: Congress approved advance payments from the Alaska Native Fund because of delays in construction of the Trans-Alaska Pipeline.

1976: Congress passed an "omnibus bill" with extensive changes and additions, including:

- Roll reopened for Alaska Natives omitted from the original enrollment.
- Establishment of an escrow account for proceeds derived previously from lands withdrawn for Native selection.
- Native corporations exempted from certain federal securities laws until January 1, 1992.
- Distributions from the Alaska Native Fund not to be considered as income in eligibility determinations for food stamps.
- Dissenter's rights eliminated in Native corporation mergers or consolidations which take effect on or before December 18, 1991.
- Klukwan Village Corporation allowed to make new land selections.
- Changes in land selections and selection process for Chugach, Yakutat, Cook Inlet Region, and Koniag.
- Authorization for land exchanges between Native corporations and the state or federal government.

1977: Validation of "assignments," allowing regional corporations to borrow against future payments from the Alaska Native Fund.

1978: Allowed oil, gas and mineral exploration on Native lands without loss of tax protections on otherwise undeveloped land.

1980 (Dec. 2): Alaska National Interest Lands Conservation Act (ANILCA):

- Changed the date on which stock restrictions would expire, from January 1, 1992, to December 18, 1991. New wording added to allow other stock restrictions, as provided by a corporation's articles, or by agreement between a corporation and its shareholders. Also described two such options – denial of voting rights to non-Natives, and right of first-refusal.
- Established the Alaska Land Bank Program.
- Extension of tax-exemption on undeveloped land, to 20 years after conveyance, instead of 20 years after ANCSA.
- Set statute of limitations on state challenge of submerged lands determinations.
- Required approval (under certain conditions) of Native allotment applications that were pending on or before December 18, 1971.
- Supplemental appropriations to Native groups, with the amount determined by population.
- Easement limitations on Native corporation or Native group lands.

1980 (Dec. 5); Disenrollment, by request, of Metlakatla Indians.

"There was a hit-and-miss job of carving up the state. The truth is that Congress was very much against a form of tribal government and having it in any form." – Willie Hensley.

Leaders' Perspectives

Continued from Page Five

with material assets prone to be so complex and cumbersome as to serve to destroy our people.

My strong belief is that it will be the former and ANCSA, more than anything else, means the Native people have the opportunity to secure their future.

Ketzler: My view of ANCSA is very personal, it is the culmination of many years' involvement in the Native movement. But to the point that I just want to protect the land. The money doesn't mean that much to me. I'd like to see it get to the people.

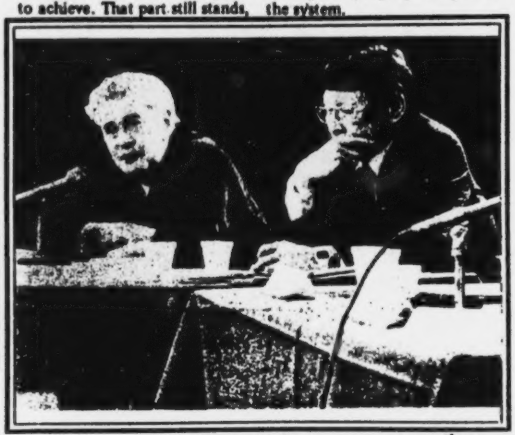
ANCSA is still very much part of my life. I still work for Native rights. My concern is that the people out on the rural land benefit from the land and have use from it. I felt many emotions as the first patent came to our village because the settlement took them years to achieve. That part still stands, although I think the structure should change.

I don't think we can be both corporate people and Indians. If we are both, we are the corporate people from 8 to 5 and Indians from 5 to 8. That doesn't fit together.

Hensley: ANCSA means we didn't get totally inundated. We have something to work with to try to protect areas to protect our survival. It means we interface with a system of government and a political system. We have our little say and all you can make of it.

We can sit and moan and groan about the loss of land, but if you are the victor, you are under no obligation to give anything back. In a sense, we were defeated without arms. In the lower 48, the Indians were defeated with arms and they were left a small amount of land. We got much more.

ANCSA provides an arena to help our people participate in the system.



Joe Upicksoun and Byron Mallott were among those who talked about ANCSA at the Alaska Native Review Commission's round table discussions.

A look back

Continued from Page Eight

termination phases, the federal government discourages tribalism and encourages assimilation, break-up of tribes, the adoption of western values and ways, and termination of its special relationship with Indians.

By the mid and late 1960s, the U.S. Indian policy had begun to swing back from assimilationist to pro-tribal. The contry was more sensitive to racial and ethnic minorities. That sensitivity brought more recognition of the value of cultural diversity.

Yet the swing to tribalism was not complete. There was still an underlying assumption that what everybody wanted was to participate in the best that America had to offer, in terms of individual prosperity and opportunities to attain that prosperity.

Most of the Native energy during the land claims effort was focused on how much land they would receive title to, the location of that land, and the amount of money to be received as compensation for land given up.

But the structure for implementing the settlement was not totally ignored. The Congress made it very clear that it had no intention of setting up new reservations. The Congress saw the extreme poverty and problems in lower 48 reservations and it had no intention of repeating that. IRAs were also considered.

"We had had experience with IRAs in Southeast Alaska. The IRAs had managed the canneries in Angoon and there had also been working relationship involving Hydaburg and Klawock. The experiences were very discouraging and really did not work out too well for those two communities. There was a tendency by Interior at that time to interfere more. . .If (the relationship with Interior had been more like it is today) I really think IRAs may have been considered more seriously. . ." John Borbridge, Alaska Native Review Commission.

It isn't clear where the idea for a corporate structure came from. Some sources say it first emerged in a report by then-Governor Wally Hickel and was carried through the various drafts.

Considering the past experiences in the lower 48 and the political and social atmosphere of the time, a corporate structure appears now to have been a logical, if novel, approach.

"As I see it. . .the Natives were presented with a series of alternatives to settle, most of which revolved around the central idea of changing their claims, which were non-productive resources in the present sense, into productive resources. That is, land owned in fee simple and money to develop that land a structure which permitted them to develop it.." Guy Martin (legislatve assistant to Congressman Nick Begich, during ANCSA), Alaska Native Review Commission.

The Congress apparently saw it as a means of promoting economic, political and social development of Alaska Natives, but with the Natives themselves making their own decisions – as corporate leaders and shareholders – instead of relying on the paternalism and authority of the Department of the Interior.

In other Indian settlements – in reservations and IRAs – decisions were subject to the approval of the Secretary of the Interior; land was held in trust for the Indians. ANCSA was different; it was unique; it was new and exciting.

Alaska Natives would have clear title to their lands; they would have the assets with which to build corporations that they would own, control and manage.

ANCSA clearly did not terminate the Alaska Natives' special relationship with the federal government. It clearly would not replace or diminish other federal Indian services or programs. It was not welfare. It was not a handout.

But while ANCSA clearly stated the above, there also seems to have been an underlying expectation in Congress that through ANCSA, Alaska Natives would gradually assimilate – economically, politically, socially – into the American mainstream and would no longer need the benefits of federal Indian services and programs.

"That possibility (of stock alienation and land loss) would be rooted on. . .normalcy, normal commercial behavior, a movement [illegible] business as usual, a move[illegible]rd [illegible]ding a sameness for the Native population in terms of the legal recognition and treatment that it had. That is, being like everybody else. It's got nothing to do with cultural traditions, but in part of one's life, it's important to be like everyone else. . .

". . .I think that self-determination and the kind of de-emphasizing differences and emphasizing sameness was what did surround the act." Doug Jones (member of Federal Field Committee staff and staff to Senator Mike Gravel), Alaska Native Review Commission.

Jones' description of Congress' thinking does not mesh with what the Native community anticipated. Certainly, different Natives expected different things from ANCSA.

Many Natives expected that their land would finally be protected, in perpetuity. Others expected more: that the land and corporations would lead to healthy village economies, more jobs, reduced social ills and a strengthening of traditional Native values and Native culture.

Thirteen years later, Alaska's Native community is measuring the expectations and aspirations of 197[illegible] the reality of 1984 and [illegible] for 1991.

The work in progress – more lies ahead

After more than two years, the Alaska Native community's internal work on 1991 is approaching completion. In April, 1985, the effort will shift gears, from negotiation and study within the Native community, to lobbying the Congress for amendments to ANCSA.

The draft resolutions prepared at AFN's September retreat in Dillingham represent a two-year process of study, analysis, convention resolutions, negotiation and compromise – all leading toward approaches that will address and satisfy both 1991 concerns and the variety of perspectives within the Native community.

The 1991 work began in 1982, when AFN commissioned a report by the Alaska Native Foundation, to examine 1991 issues. At the 1982 AFN Convention, a panel of attorneys presented a workshop to explain those issues. Delegates at the 1982 Convention told AFN to make 1991 its highest priority for the coming year.

In 1983, AFN held two retreats, in Kodiak and Valdez, at which the Native leadership examined and refined the issues and identified the work to be done. The 1983 retreats produced draft resolutions that were presented to delegates at the 1983 AFN Convention.

The 1983 Convention was devoted to 1991: major speakers addressed it, Native leaders explained the issues, and on the final day, the delegates worked out amendments and passed a package of eight special resolutions directing AFN's work for the 1983-1984 year.

Most of the 1983 resolutions called for studies of the legal and practical implications of various approaches to the 1991 issues: stock alienation and protection, land protection, New Natives, the corporate structure and special benefits for Elders.

The studies were done by veteran ANCSA attornys Ken Bass, Don Mitchell, Jim Wickwire and Chuck Goldmark. Their reports were presented in preliminary form at the Kotzebue 1991 retreat in July.

At that retreat, the participants – representing village, regional, non-profit and tribal interests, among others – drafted six "concepts." The concepts were draft policy statements establishing specific 1991 goals through amendments to ANCSA.

The retreat participants took the concepts back to their boards and communities to determine whether the concepts were acceptable and to elicit discussion about the details that must be addressed.

Those comments and reaction to the concepts were laid out in September at the last retreat in Dillingham, where differences were negotiated. The result is the eight draft resolutions approved for presentation at the 1984 Convention.

Delegates at the convention will attend three workshops on the 1991 resolutions and the feedback from the workshops may result in changes to the resolutions on the convention floor.

As passed by the delegates, the resolutions will be further refined for a special mid-year 1991 convention in early April of 1985.

Between the end of October and April, the resolutions will be circulated and discussed in regions and villages throughout the state, to ensure that as many Natives as possible understand them and have the opportunity to comment on them. During that period, there may also be another retreat of Native leadership to review the details and any changes.

The proposed legislation will be ratified at the April convention. After that, AFN will begin the long process of lobbying Congress. Based on past experience, it will probably take two to four years to push the legislation through the Congress.

Elijah Rock and Arnold Brower, Jr. were members of a large Arctic Slope contingent at the September retreat.

Elders and youth gave their perspectives on 1991 during the 1983 AFN Convention.

A television program on 1991 - with Willie Hensley, Charlie Johnson and Roy Huhndorf, was produced and broadcast statewide. Tapes of the program were also made available for village and regional meetings.

Youth [illegible] Valerie Davidson, a Calista shareholder and president of the AFN Youth Council, participated in the July 1984 retreat.

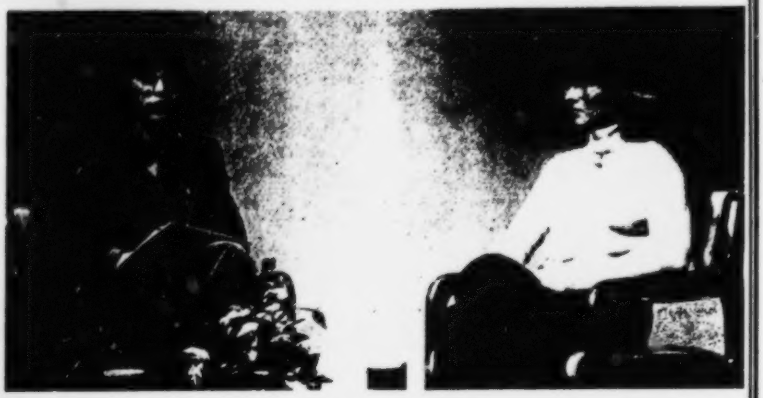
Working on 1991

1984: A Year's Worth of Study, Analysis, Talk

Speaking out at the 1983 convention.

A lot of listening, talking and thinking - Gordon Pullar (Kodiak Area Native Assoc.) and Elders Alfred Wells and Billy Sheldon at the 1991 retreat in Kotzebue.

Attorney Ken Bass explains a legal point. He was one of three attorneys hired to study 1991 issues, pursuant to the 1983 convention resolutions.



Patty Harper, of KYUK-TV in Bethel, interviews AFN President Janie Leask about 1991. Leask spoke on ANCSA and 1991 at Kuskokwim Community College in March.

Spud Williams of Tanana Chiefs Conference ponders a problem during the September retreat on 1991.

KOKHANOK
WARLORD

Don Nie[illegible] Corp traveled to Kokhanok to talk about 1991 at the annual meeting of Alaska Peninsula Corp

Questions about the Resolutions

Continued from Page Eight

holders vote to write that into the corporation's articles.

The problems still remains, however, that an Elder who receives cash from his corporation could lose his eligiblity for government welfare services, since the cash would be counted as income.

It does not look very likely that the Congress would agree to exempt cash payments from eligibility determinations because the U.S. Treasure Department would strongly oppose it.

Even though corporations can provide special benefits to Elders now (if the shareholders approve it through an amendment to the corporation's articles), the proposal in Resolution No. 4 affirms that, by allowing corporations to issue special classes of stock.

Question: Would any of these resolutions address Native sovereignty and IRA's?

Answer: No. But they would alleviate some of the fears about loss of Native lands, and objections to the corporate structure. For example, they would allow corporations to transfer their assets to a non-corporate organization, such as an IRA or other tribal entity.

Question: If the Congress passes these amendments, would we have to do something, or would they be automatic?

Answer: One of the proposals – to prolubit any stock transfer to non-Natives who are not descencents of Natives – would be automatic, with no provision for opting out.

Two of the proposals – to eliminate the lifting of stock restrictions; and Land Bank protections – would be automatic, but with an opt-out ability. In other words, a corporation could choose not to have the Land Bank protections or choose to make stock alienable, but it would have to opt-out. if a corporation took no action, the changes would automatically take effect.

Under the other proposals – offering stock to Natives; granting voting rights to Native descendents who have less than one-quarter blood quantum; transferring land or other assets to another Native organization; and a corporation buying stock from its shareholders – the corporation's shareholders would have to vote to take advantage of the options.

Question: How do all of the proposals fit together?

Answer: AFN has been describing them as a "Chinese menu," from which a corporation could pick the ones it wanted. Continuing with that analogy, if a corporation picked the proposals in Resolutions No. 7 and No. 8, it would not need any of the other selections, because those two together address just about every 1991 issue: land protection, eliminating stock altogether and membership instead of shareholders.

Another corporation might want to keep the corporate structure and allow stock to be sold, but protect its land. That corporation could vote to allow stock alientation but transfer its land to another Native organization, with Land Bank protections.

If Congress enacts these proposals, each village and regional corporation would have a big selection to choose from. It is important to remember that these proposals could still be changed before they are submitted to the Congress.

Protecting the land

Continued from Page Two

or traditional council could get those protections if either of two things happened. First, if the Secretary of the Interior agreed to take the land back into trust for the IRA or traditional council, then the land woud be protected. Second, the land would be protected if the IRA or traditional council is a federally-recognized tribe.

In 1978, the Venetie Village corporation transferred its land to the IRA village of Venetie and the IRA asked the Interior Secretary to take the land into trust. The secretary refused on grounds that to take the land back into trust would violate the spirit of ANCSA, since ANCSA said that permanent, racially-defined institutions were not to be created.

That 1978 decision is still the position of the Department of Interior. Even though Interior refused Venetie's request, the village corporation went ahead and transferred its land to the Venetie IRA.

IRA corporations and traditional councils may own land whether or not the Interior Secretary takes it into trust. Land owned by an IRA or traditional council would be fully protected if the IRA or traditional council is a federally-recognized tribe. Although Native villages are considered tribes for specific purposes, it is not at all clear whether they have the federal recognition needed to ensure land protection.

a corporation transferred its land to an IRA or traditional council – or to a different, non-profit Native entity – the land would be protected from loss through sale of corporate stock.

Complete protection of Native lands – from loss through bad business decisions, sale of corporate stock, taxes, debts, eminent domain and adverse possession – would require amendments to ANCSA.

The corporate structure

Continued from Page Four

fers to IRAs see story on page —- 2.)

Legal issues also come into play. Under the Alaska Corporate Code – which applies to Native corporations – a corporation may not transfer the bulk of its assets without approval from two-thirds of its shareholders. Furthermore, under state law, shareholders who object to the transfer of assets may claim "dissenter's rights" and demand that the corporation buy their stock.

If the corporation transfers its assets to another entity and charges either no money or only a small amount for the assets, the corporation would be vulnerable to a lawsuit by its shareholders on grounds that the corporation was wasting its assets.

Amendments to ANCSA or state law would reduce the legal risks.

If a Native corporation wanted to become a non-profit entity, it might be able to do so, although again there would be legal risks, unless ANCSA or Alaska law is amended.

A corporation might switch to a non-profit through either a merger or a reorganization. However, under Alaska law, a for-profit corporation cannot merge with a non-profit, so a change in state law or in ANCSA would be required.

In a reorganization, the corporation would transfer its assets to a new or existing non-profit entity, while leaving the stock in the old corporation. Since all the corporation's assets would be in the non-profit, the corporation would be an empty shell. There would still be corporate stock but it would have no value because the non-profit entity would own all the valuable assets.

In either case, a merger or a reorganization, two-thirds of the shareholders would have to approve the change and dissenting shareholders would have the right to cash out (demand that the corporation buy their shares), unless either state or federal law is amended to eliminate dissenters' rights.

It is important to note that non-profit doesn't necessarily mean tax-exempt. In fact, the tax-exempt status is very restrictive and difficult to get. Also, non-profit organizations in Alaska cannot make distributions to their members unless and until it is dissolved.

There are different types of organizations, besides tribal entities and non-profit membership groups, that could be considered, even if ANCSA is not amended.

Each of the different types allow for different kinds of restrictions that regular corporations don't have. However, none of them would place a total ban on stock transfers; such a total stock restriction would be the most difficult to implement without an amendment to ANCSA.

Conversions that might be possible without amending ANCSA include conversion to a "close corporation," a "limited partnership," or a "cooperative corporation."

The most attractive of the three – in terms of addressing Native concerns about 1991, without changes in existing law – is the cooperative corporation, which is legal under Alaska law.

A cooperative corporation has members and may establish terms and conditions of membership. Members own membership stock, but the cooperative can restrict the issuance and transferability of the stock.

There may also be "capital stock," owned by non-members, but voting rights are usually limited to the members of the cooperative, except on certain issues that affect the capital stock.

Although a cooperative corporation may appear attractive, it has not been studied enough to know whether it would be a useful alternative to the current ANCSA corporate structure.

Any change in the existing corporate structure presents some degree of legal risk, and some changes would present more risk than others. Changes in state law or in ANCSA would reduce those risks of challenge, but they would not eliminate completely the possibility of a lawsuit.

Any changes which reduce the sale value of Native stock might raise protests from shareholders who want to be able to sell their stock, and sell it at the highest possible price. That is the sacrifice that all Native shareholders would have to make, if the corporations want to remain Native.

Don't forget how to laugh - Della Keats

Photo by Paul Brown

Stock alienation

(Continued from Page Three)

stock has generated the biggest concerns in the Native community.

Some shareholders may be offered large sums of money for their stock. The offers could come from other Natives, from non-Native individuals and from large corporations.

A shareholder might not know if the potential buyer is part of a takeover attempt since corporate takeovers do not have to be announced until the buyer already owns five percent of the corporate stock.

A Native corporation can do some thing[illegible] itself again[illegible] there are measures that would discourage or prevent outsiders from buying up Native stock. (For a description of those approaches, see the story on page —4).

The protective measures include changes to a different kind of corporation, amendments to the corporate bylaws and articles and major changes to the corporate structure, itself.

Some of the measures would require approval from the shareholders and almost any change –whether to the corporate structure or to stock alienation after 1991–may carry some legal risk. Amendments to ANC[illegible] risks, but [illegible] altogether.

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Newsletter

ALASKA FEDERATION
OF NATIVES, INC.

Volume 3, Number 4
July-August 1984

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1991: Moving toward answers to the challenge

Willie Hensley and Robert Newlin, of NANA, and Marlene Johnson, of Sealaska, at the retreat.

In one of the early studies of 1991 issues, it was written that 1991 is like a "monstrous rolling rock . . . approaching with relentless speed yet unpredictable results."

There is little the Native community can do to slow the speed of its approach; yet there is much that can be done — that *is* being done — to control its direction and final impact.

Can Native lands be protected? Can the corporations formed under the Alaska Native Claims Settlement Act remain specifically Native entities, working for the benefit of this and future generations? Can the inequities of the original settlement be turned around, so that young Natives, and Natives yet to be born, have the chance to be full-fledged beneficiaries of the settlement?

The answer to all of these questions is yes. Alaska Natives can and will find answers to the difficult problems reflected in 1991. Alaska Natives have the strength to ensure that the settlement act reflects the desires of Native people and meets the needs of the Native community.

The work toward those ends is going on now. Solutions are being debated, analyzed, compared and dissected. The most recent phase of this work occurred July 12 and 13 in Kotzebue, when AFN held the first of two retreats this year on 1991.

Nearly 50 people attended the retreat and the participants reflected the interests and concerns of nearly every area within the Native community: regional and village corporations, non-profit associations, village councils, United Tribes of Alaska, Elders and youth.

At the second retreat in September, the Native leaders — again representing the various interests — will meet to review the concepts drafted at the July retreat and begin drafting resolutions for presentation to delegates at the 1984 AFN Convention in October. After the September retreat, AFN will begin a public information campaign to make sure that as many people as possible are familiar with and understand the issues, options and proposed resolutions.

This year's retreats are part of an overall process which began several years ago, with the first preliminary reports on 1991 issues. During 1983, AFN held two retreats on 1991, in preparation for the 1983 AFN Convention. At those retreats, Native leaders

(continued on page 4)

Janie Leask

President's Report

I usually use this space to talk about the issues and activities of AFN — and there are plenty of them, especially in the next few months leading up to the convention.

But I'm foregoing my usual review of our work, because there is an issue — a statement — that we are hearing more and more and it's a very disturbing one because it is wrong.

In July I attended a conference in a southwest village to give a brief presentation of AFN's work on 1991

(continued on page 9)

1991 retreat produces possible solutions

(continued from page 1)

John Schaeffer makes a point. Roy Ewan (left) and Robert Marshall also participated.

began an indepth analysis of the 1991 issues. Out of that work came resolutions presented to the convention delegates. As passed at the convention, the resolutions mapped out the directions and focus of AFN's work this year.

In response to those resolutions, AFN contracted with attorneys — all experienced in ANCSA work — to research and produce written reports on the legal issues surrounding 1991.

The reports provided background for the retreat, by outlining the options for change that are available under existing law, and approaches that would require amendments to ANCSA to get around potential legal problems. On the first day of the July rereat, the attorneys summarized their reports.

AFN attorney Don Mitchell's report addressed benefits for Elders and land protection.

On the Elders question, Mitchell found that under existing law, Native corporations may distribute special benefits to Elders although they might need to change their articles of incorporation to authorize such benefits. An amendment to ANCSA would be required to protect Elders against losing transfer payments (such as food stamps), since the benefits from the corporation would be counted as assets.

In the land protection section, Mitchell reviewed the history of ANCSA, land protections available under existing law (the Land Bank Program) and limitations to those protections. He also described the protections that might be provided by other approaches to land protection, such as transferring the land to another entity, and the problems that could arise by taking those approaches.

His analysis included a run-down of the protections, limitations and problems of transferring land to such entities as a non-profit, a municipal corporation and an IRA or traditional village council.

Chuck Goldmark and Jim Wickwire addressed the issues of stock protection and stock alienation. They described a corporate takeover and various methods that other corporations use to protect themselves against takeover. They also described the changes that could occur if a Native corporation is taken over.

For example, the Native corporations now perform social functions which benefit their shareholders. But after a takeover, the corporation would have no obligation to continue such social functions. Indeed, the new shareholders could sue the corporation if it did, since a "typical" corporation's only duty is to show profits.

Their report also outlined various strategies that might be used by Native corporations to prevent takeovers.

Ken Bass wrote the reports on New Natives (afterborns) and the corporate structure.

Distributing Native stock to Natives born since ANCSA was passed poses a dilemma, Bass said, because somebody must pay for it. Either the New Native must pay for the stock or existing shareholders pay for it through dilution of the dollar value of their own stock. He also described some of the potential legal problems under existing law if corporations offered stock to New Natives at a low price, or no price.

Bass discussed why the corporate structure was chosen to implement ANCSA and he reviewed different structures that have been used in settlements with lower 48 Indians. He also examined alternative vehicles for ANCSA.

Bass looked at the corporate structure itself and drew a "character portrait" of a typical (non-Native) corporation. At its extreme, he said, the typical corporation is "measured by the bottom line . . . the corporation is dollars, pure and simple. Shareholders are meaningless. Shareholders are nonexistent. Shareholders are anonymous."

Summaries of the attorneys' reports led into a lengthy discussion of Native values. During this discussion, the participants agreed that the Native values — sharing, respect for others, the relationship to the land — are far removed and contradictory to, the values of a typical corporation. Yet, they also agreed, there is nothing to prevent a Native corporation from reflecting those traditional values, in any number of ways. If the current structure does not suit the needs of the shareholders, then the shareholders ought to work to change it, so that it does.

The second day of the retreat was spent hammering out six concepts. These are very important concepts, because they represent the kind of flexibility and opportunity that the

(continued on next page)

(Photo by Tommy Ongtooguk)

A retreat session

1991

Issues and AFN Work Plan

This paper has been prepared by the Alaska Federation of Natives as a tool for village and regional corporations and individuals who may have questions about complicated issues related to 1991. This paper seeks to combine existing information and clarify the issues, the resolutions passed by delegates at the 1983 AFN Convention and the work to be undertaken this year by AFN, in response to those resolutions. Further information may be obtained by contacting the AFN office.

THE ISSUES

Stock Alienation

Under the terms of the Alaska Native Claims Settlement Act, stock in Native corporations cannot be sold, or otherwise transferred, until 20 years after the act was passed. On December 18, 1991, the corporations will "call in" the existing, restricted stock. On January 1, 1992, they will issue new, unrestricted stock to their stockholders. At that time, shareholders will be free to sell all, or a portion of their stock; pledge it as collateral; or otherwise use or dispose of it, just like shareholders in any corporation.

However, subsequent amendments to ANCSA do give the corporations some options. Before December 18, 1991, a corporation may choose to limit voting rights to Native shareholders, so that non-Native shareholders could own stock, but would not be allowed to vote. The corporation could also include a provision to require that any stock put up for sale must be offered first to the corporation, itself, or to the shareholder's immediate family. Thus, they would have the "right of first refusal."

Another amendment to the act appears to be very significant, but unfortunately, it is not clear exactly what it allows. That amendment changed the wording, to read that the new stock issued in 1992 would be "subject only to such restrictions as may be provided by the articles of incorporation of the corporation, or agreements between corporations and individual shareholders."

The change in wording certainly seems to give the corporations more flexibility, but it is unclear just what actions it authorizes.

Land Protection

Under the existing ANCSA structure, whoever owns and controls the corporation also owns and controls the land conveyed to that corporation. If Native shareholders relinquish their stock, they also give up the land.

Even if Native shareholders hold on to their stock, corporation land will become more vulnerable to loss after 1991. Native corporation land can be lost in several ways. In addition to loss through voluntary sale, land can be taken to pay unpaid taxes or debts; through adverse possession; or condemnation.

Native lands which are *undeveloped* are exempt from property taxes for the first 20 years after the land is conveyed. That property tax exemption can be extended by putting the land into the Alaska Land Bank, but the land must remain undeveloped. However, it is not clear what constitutes "development."

New Natives

The ANCSA benefits--money and shares in the corporation--were granted only to Natives alive when the act was signed on December 18, 1971. Natives born after that date may own stock only through inheritance. The term "New Natives" refers to those Natives born too late to receive stock directly.

There are no provisions in ANCSA to treat New Natives differently from non-Natives, although New Natives who inherit stock are voting stockholders. Non-Natives even now may own stock through inheritance but they do not have voting rights.

The question is whether Native corporations want to make special provisons for new Natives, and if so, how. If a corporation decides to issue stock to new Natives, as well as existing shareholders, in 1992, the dollar value of stock owned by existing shareholders will be reduced, since there will be more people receiving stock from the same "pot." Other methods for bringing

Elders Alfred Wells (center) and Billy Sheldon (right) lent their thoughts on 1991, along with Gordon Pullar, of Kodiak Area Native Association.

(continued from previous page)

Native community must have to resolve 1991 issues.

It is important to stress that, as concepts, they are not cast in stone. Between the July retreat and September, retreat participants are taking these concepts to their boards, members and shareholders for comment and input.

Before getting down into the details of implementing these concepts or drafting legislation, it is important that there be general agreement on the ideas behind them.

Those ideas are:

(1) Eliminate the 1991 provision which calls for unrestricted stock to be issued in January 1992. Corporations would also have the option to buy back stock from shareholders who wish to sell.

(2) Require corporations to offer stock to New Natives.

(3) So long as stock is restricted, eliminate the loophole which allows non-Natives to own stock through inheritance or divorce settlements.

(4) Allow corporations to extend voting rights to Natives who have less than one-quarter blood quantum.

(5) Make Land Bank protections automatic for undeveloped land, and allow Native land to be transferred to another Native entity without losing Land Bank protections.

(6) Allow corporations to transfer their assets to another Native entity which might not have stock. Membership in the Native entity would consist of existing shareholders and other Natives. The entity would be able to distribute assets (such as benefits to Elders), though not land, to its members.

These concepts are pretty significant. They raise a host of other questions, many of which were discussed at length during the retreat. Those questions will be addressed again in September, but at this point, it is important to focus on the concepts, the ideas, not the details.

If you take these concepts as a total picture, it is clear that they address all of the major 1991 issues. They represent a great leap forward; tangible progress toward the goals of Alaska Natives.

The people who participated in the retreat represent a microcosm of Alaska's Native community: diverse, concerned, committed. The process used at the retreat worked. It worked because the people, for all of their different ideas and opinions and perspectives, were willing to talk and listen and compromise toward a single purpose — the well-being and continued survival of Alaska Natives.

NANA shareholders Gladys Chesney and Wilson J. Ticket sat in on the retreat sessions.

in new Natives are detailed elsewhere in this paper.

Benefits for Elders

The Alaska Native Claims Settlement Act did not include any provisions to provide special benefits for elders. However, that does not preclude individual corporations from setting up programs for elders. Indeed, several corporations have instituted life insurance annuity programs, which provide elders with monthly payments, to ensure that they see some tangible benefits from their participation as shareholders and to help them, financially when they need it most.

While any corporation is free to institute such a program, the hitch is that the increased income can reduce the elder's eligibility for state and federal assistance, such as food stamps and social security.

AFN RESOLUTIONS

Delegates at the 1983 convention passed eight resolutions pertaining to 1991 issues. Taken together, the resolutions outline a general policy and work plan that AFN will undertake in 1984, consistent with that general policy. The following is a description of each resolution and what it means.

Land Protection (No. 83-01)

AFN will develop and seek enactment of additional methods for protecting Native ownership of lands. Each corporation would decide for itself whether to use those protections.

Stock Alienation (No. 83-02)

This resolution advocates continuing the ban on stock alienation beyond 1991. However, a corporation would be able to "opt out" of the ban and allow stocks to be sold, if it wished. The decisions made by each corporation should be from the same set of options available to all corporations.

Protection of Native Values (No. 83-03)

AFN will study ways that the corporate structure might be changed to better suit Native values, Native culture and Native needs. Among the changes to be studied, which would be *optional* for each corporation, are the following:

- Membership organizations, combining Native values with compatible aspects of western corporations.
- Tribal organizations, both traditional and IRA.
- Separating the land from the business and using different organizational vehicles to manage the different assets.

New Natives (No. 83-04)

AFN will study the practical and legal implications of changing the law so that ANCSA benefits are a birthright of every Native, not just those Alaska Natives alive when the act was passed. The study will include work on the following issues:

- Definition of "Native" for purposes of the settlement
- A system in which Natives receive stock as a birthright, but not necessarily at birth. For example, the stock might be received at maturity; or nonvoting stock could be receivied at birth, with voting rights conferred at maturity.
- Different classes of stock.
- Whether all ANCSA corporations should use the same system regarding New Natives.
- Participation for Natives born before December 18, 1971, who were left out of ANCSA.
- Mechanisms for dealing with New Natives whose ancestral roots go back to two or more regions or villages.

The above are issues to be studied. But if changes in the law are actually implemented, the legislation would make it clear that each corporation has the option to accept or reject such changes.

Stock Protection (No. 83-05)

AFN will study various options corporations might use to prevent non-Native ownership of corporate stock after 1991. The AFN study will look at the practical and legal aspects of the following possibilities:

- Complete prohibition on selling or transferring stock, even by inheritance.
- Permitting sale or transfer of stock only to the corporation which issued the stock or to Natives who already own stock in that corporation.
- Permitting sale or transfer of stock only to Natives or Native organizations.
- Requiring specific approval of the corporation before selling or transferring stock.
- Limit the amount of stock that one person could sell in a given period of time and/or limit the amount of stock one shareholder can own.
- Using right of first refusal and/or limitation of voting rights to Natives only, as permitted under ANILCA amendments to ANCSA.
- Create different classes of stock for Natives and non-Natives.
- Use voting trusts to preserve Native control regardless of who owns the stock.
- Elimination of stock.

If any of the above options are written into proposed legislation, the legislation would also make it clear that no corporation would be forced to implement new restrictions.

Elders (No. 83-06)

AFN will request changes in ANCSA to authorize Native corporations to provide social benefits to their elders. AFN will also request that such benefits not affect eligibility for state or federal social service programs.

Retribalization of Native Lands (No. 83-07)

This resolution recommends that villages consider the possibility of retribalizing ANCSA lands, as one method for protecting the land. The resolution does not call for any legislation, or further action by AFN, but if any legislation is proposed, it would be written so that each corporation would have the option of whether to adopt any new mechanism.

Combined Resources (No. 83-08)

This resolution recommends that all ANCSA corporations, regional and village, pool their resources and efforts to work on 1991 issues. By combining the work and resources, the corporations will avoid unneccessary costs and duplication and present a more unified--and hence, more effective--approach to changes in ANCSA.

SUMMARY AND WORK PLAN

This year AFN will undertake detailed studies of the different approaches that might be used to address stock protection, land protection, participation of New Natives and changes to the corporate structure. AFN will also begin drafting proposed legislation to address benefits for elders.

The findings and draft legislation will be presented to delegates at the 1984 AFN Convention.

AFN's work plan for 1984 is much the same as that used in 1983: AFN will contract with attornies to do the initial legal and practical examinations of the various 1991 issues.

Their findings will be presented to Native leadership at two retreats, tentatively scheduled for June and September. At those retreats, the findings will provide the background for drafting proposed legislation. ■

STUDENT ACTIVITY: LIST OF 1991 ISSUES (list as many as you can)

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

Which issues are important to you?

In what ways are these issues connected? (If you have difficulty, ask your teacher for help.)

The rest of this unit will explore these 1991 issues and the implications of the Alaska Native Claims Settlement Act.

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LESSON 2: The Newborns—Part I

Time: Two class periods.

Objectives:

1. The students will conduct interviews and record information.
2. The students will be able to analyze the newborn issue and establish priorities before making decisions.
3. The students will become more knowledgeable about the newborn issue and be able to state reasons for and against inclusion.

Procedures:

1. Read Section 5 of ANCSA entitled, "Enrollment" to the class, (from Alaska Native Land Claims by Robert D. Arnold) highlighting the clauses which refer to "afterborns."
2. Hold a very brief discussion concerning the "afterborn" clause.
3. Suggest to the students that they interview five to ten students who were born after 1991.
4. Help the students establish an interview format (keep it brief and simple.)
5. Conduct the interviews.
6. Optional - if you have a class that has more than four or five students, it would be possible to interview five to ten adults in the community to determine their feelings about the afterborns.
7. Tabulate your results and add these results to your Village Profile collection.
8. Students discuss, analyze, and evaluate findings.

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ENROLLMENT

SEC. 5 (a) The Secretary shall prepare within two years from the date of enactment of this Act a roll of all Natives who were born on or before, and who are living on, the date of enactment of this Act. Any decision of the Secretary regarding eligibility for enrollment shall be final.

(b) The roll prepared by the Secretary shall show for each Native, among other things, the region and the village or other place in which he resided on the date of the 1970 census enumeration, and he shall be enrolled according to such residence. Except as provided in subsection (c), a Native eligible for enrollment who is not, when the roll is prepared, a permanent resident of one of the twelve regions established pursuant to subsection 7(a) shall be enrolled by the Secretary in one of the twelve regions, giving priority in the following order to—

(1) the region where the Native resided on the 1970 census date if he had resided there without substantial interruption for two or more years;

(2) the region where the Native previously resided for an aggregate of ten years or more;

(3) the region where the Native was born; and

(4) the region from which an ancestor of the Native came: The Secretary may enroll a Native in a different region when necessary to avoid enrolling members of the same family in different regions or otherwise avoid hardship.

(c) A Native eligible for enrollment who is eighteen years of age or older and is not a permanent resident of one of the twelve regions may, on the date he files an application for enrollment, elect to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, if such region is established, he shall be enrolled as provided in subsection (b). His election shall apply to all dependent members of his household who are less than eighteen years of age, but shall not affect the enrollment of anyone else.

From: Alaska Native Land Claims by Robert D. Arnold. Anchorage: Alaska, Native Foundation, 1976, p.303.

LESSON 3: The Newborns—Part II

Time: Two class periods.

Objectives:

1. The students will appreciate the complexities of the newborn issue.
2. The students will be able to state the various points of views represented by the issue.
3. The students will begin to evaluate the newborn issue.

Procedures:

1. The students will role-play the newborn issue. Assign the following roles to the students:

   a. a young person born after 1971
   b. a board member from the Regional Corporation
   c. an elder from the village
   d. a village corporation member

   Depending upon your class size, you may have to make alterations such as increasing or decreasing the new number of roles, or have students write position papers from each of the above points of view.

2. Ask for volunteers to play the roles.

3. The following descriptions can be used to create the roles:

   a. Newborn - I was born in 1973. I am a Native. Both my parents are Yupik speakers. I want to hunt and fish when I get older. The elders have taught me to respect the land. I have a right to use the land like any other person from the village. I should not be different than you.

   b. Regional Corporation Board Member - As a regional corporation board member it is my job to make profits for the corporation. Without profits the corporation would lose its money and possibly its land. It is in the best interest of the corporation to have each person make as much money as possible. If we increase the number of people in the corporation then everybody will have less.

   c. Elder - We are the people of this land. The land is needed for our survival. The land and the people should not be divided. Our culture has survived from generation to generation. Our culture cannot survive if we do not include the young.

   d. Village Corporation Board Member - The corporation and the culture are both very important. This is a difficult decision. I have children who may not be included. I want them to be part of the

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corporation, but the corporation is not our culture. The purpose of the corporation is to make a profit. I am just not sure.

4. Optional - This activity can be expanded by having your students interview persons in the village who reflect the above roles. Students would then have varying and deeper perspectives on this issue.

5. Hold a meeting in your class with different students playing each role. Make sure that each student knows his/her role.

6. After the role play, list out the most important problems related to this issue.

LESSON 4: Newborns and AFN Resolutions

Time: One class period.

Objectives:

1. The students will compare their own concerns regarding newborns with the AFN resolutions.
2. The students will formulate their own resolutions concerning the newborn issue.

Procedures:

1. Have the students read some of the AFN resolutions that apply to the newborns. Review Tundra Times articles entitled, "All Want Their Children to Receive Share," and "New Natives Dilemma: Fairness or Dilution" (see reading material in Lesson 1).
2. Have the class assume that they are at a Native conference concerned with the newborn issue. They have been called upon to write up resolutions.
3. Have the students formulate their own resolutions on the newborn issue.
4. Compare the students' resolutions to the AFN's Resolution 84-04.

All want their children to receive share

By Bill Hess
Tundra Times

The quiet in the tiny greasy spoon-type restaurant of the Emmonak Community Center ends suddenly as three young boys burst in from the 30-below weather outside. Laughter pours from the energetic smiles constantly cracking their frosty red faces, and their words tumble out in what at first seems to be nothing but nonsense.

"What is the matter with you boys?" the restaurant-man scolds in a gruff but friendly Greek-accented voice. "You have no business being out in weather like this! See? Look at your cheeks! You are going to get frost-bit on your face!"

"I been frostbit!" answers the one with the roundest, brightest red face. He is eight years old.

"Me too, I been frostbit!" a slightly smaller but still eight-year-old friend insists. A tiny, paper Canadian flag suspended from a toothpick pokes up from his furry winter hat. It is a gift from Beverly Berger, wife of Canadian Judge Thomas Berger, who has been holding hearings in a nearby room to try and find out how the people here and in nearby villages feel about life since passage of the Alaska Native Claims Settlement Act in 1971.

Sean Wasca, Adrian Agustine and Alfred Moses show no concern as Thomas Berger and others end a hearing ripe with emotional discussions on their and other young peoples' futures as Alaska Natives born after December 18, 1971.

A good many of the comments heard by Judge Berger have been directed at these young people, not just at Sean Waska, Adrian Augustine and their nine-year-old friend, Alfred Moses, but at all the Alaska Natives born after December 18, 1971: the "Afterborns," the "New Natives," call them by whatever name that best suits your political purpose.

The boys run over to a table where the only customer is seated, and fill the chairs opposite him. "You guys again?" he asks. A short time earlier he had seen them frolicking around snow-filled boats waiting on the bank above the frozen Yukon River, slashing away at each other with stick-swords, as if they were re-enacting the great Star Wars battle scenes between Darth Vader and Luke SkyWalker. Never mind that the wind chill is in the minus 60 range.

They had insisted that once their duels were finished, they were going to go about town, do in a few dogs with their sword-sticks, take them home, cook them and eat them. Hey, come on! Who do you think this is? Some dumb tourist you're talking to?

"What's that?" the round-faced one asks as the eater pours some French dressing over his salad.

"Salad dressing," he responds.

"You eat it?" Canadian flag asks increduously.

"Yea, what do you eat?"

"Cheeseburger and fries," Round Face lights up, as if maybe there's hope the Eater will treat them to such a meal. He won't.

"And fish," the quieter one finally chimes in. "At home we eat fish, dried fish, in long strips. It keeps you warm when you're out fishing, hunting."

Before the sword-fight scene, the Eater had first met these boys as they frolicked around the table of Judge Berger just after the afternoon session recessed. The afternoon's hearings had been dominated by the words of young people just old enough to qualify as shareholders under ANCSA. Most of them had thought that these, their younger Yup'ik brothers, and sisters as well, should be included under the Act.

Perhaps it could be changed, they suggested, so that these young people and all those who followed could also have the paper shares which meant that they too owned some of the land their forefathers had hunted on, and they too could share in whatever profits, big or small, might ever be divided up among shareholders.

There were a very few who did not want these young people to receive stocks, except by inheritance. After all, the addition of more shareholders would make any individual payments smaller yet, and, not withstanding the $20 Calista Corporation paid each shareholder last year, these payments have been almost non-existent to date.

Virtually all the older people had wanted these youngsters included as shareholders, to be recognized as real Alaska Natives, with unbreakable ties to the land, providing that such foreign sounding terms as "stock alienation" and "property taxation" did not yet separate them from the landowners of Alaska.

Another boy, who is introduced, but whose name is quickly forgotten, joins the group. Forgotten Name says he is 10 years old, going on nine.

"Ten going on nine?" the Eater wonders.

"Ehh!" Forgotten Name's eyes suddenly widen. "I mean 10 going on 11! Next week." He laughs, delighted with his own mistake.

No afterborn, new Natives had testified at Emmonak. These had been asked by an observer as they milled around Berger's table what they thought of ANCSA, of the fact that just because they had been born after 1971 they could not be shareholders, and of the 1991 date when those who are shareholders will be able to sell their stocks. Unless the law is changed.

They had no answer. It was an issue they did not want to tangle their brains with just yet. They were much more interested in getting their pictures taken. "You put it in the paper," they said.

A light-haired white man with one arm and a prothesis – a false arm - walks in to place an order for dinner.

"What happened to his arm?" Round Face asks the Eater.

"I don't know."

The boys get up and scurry over to the counter, alongside the man with one arm.

"What happened to your arm?" Round Face asks.

"It got cut off in a car," One Arm answers calmly.

"Lot of blood?" Canadian Flag asks.

"I don't know. I was asleep. Car crashed and I went to sleep. Don't remember anything!"

The boys are curious about the prothesis. The man raises it, and opens and closes the two hook-like projections which serve as hands and fingers. The boys laugh nervously.

"See," One Arm says, "just like your two fingers!"

One Man sits down and the boys hurry back to the Eater.

"You guys hunt and fish?" he asks.

"Yes," the Quieter One answers. "We fish all the time. We catch big fish."

"You guys catch sardines!" the Restaurant Man, who had come over to make the boys stop bothering his guest, pipes in. When the Eater assured him the boys were no trouble, the Restaurant Man decided to let them stay."

"What are sardines?" Canadian Flag asks.

"Little tiny fish, like you see in a can," Restaurant Man answers.

"I seen a fish caught right out here, a king salmon, it was bigger than you!" he teases Round Face.

"Bigger than me?" Round Face stands up to show just how big he really is.

"Yea," Restaurant Man answers, holding his hand, palm toward the floor, a few inches above Round Face's head. "It was 78 pounds. You don't weigh that much."

"I weigh 57 pounds."

"See?" Restaurant Man says ha[illegible]

[illegible] be[illegible] the [illegible] right out here, in the Lower Yukon," he addresses the eater.

"One time there were these two ladies fishing right out here. They were with their husbands, but their husbands left to go somewhere else and do some serious fishing," Restaurant Man smiles ironically as he recalls what happened. "They left the wives there to fish just for fun. In one sweep, these two women caught $6,000 worth of king salmon!"

Suddenly, a barrage of customers invade the diner. Restaurant Man goes back to work, the boys run into the hall, and the Eater returns to his eating.

Soon there are cheeseburgers, with mushrooms and fries; grilled cheese sandwiches; a New York steak, and greasy gyros sandwiches being downed with coffee and Pepsi. Adult voices discussing adult subjects fill the room. Suddenly, the boys burst back into the room, laughing, squealing, and running around the tables.

"Out!" the Restaurant Man points to the door.

Out they flee, still laughing, and they disappear into the dark.

The New Natives. The Afterborns. Call them what you will, these Alaska Natives born after 1971.

Photos

and stories

[illegible]ess

STUDENT ACTIVITY: RESOLUTIONS ON 1991 - NEWBORNS

WHEREAS, ALASKA NATIVES HAVE EXISTED AS A DISTINCT AND UNIQUE PEOPLE FROM TIME IMMEMORIAL AND WILL CONTINUE TO EXIST.

NOW THEREFORE BE IT RESOLVED, THAT

NOW THEREFORE BE IT RESOLVED, THAT

NOW THEREFORE BE IT RESOLVED, THAT

*For advanced study, please read information on the right of first refusal (ANILCA Title XIV Sec 1401). ANILCA, which amended the Alaska Native Claims Settlement Act, made it possible for newborns to be part of the corporation.

ALASKA FEDERATION OF NATIVES, INC.
1991 RESOLUTION

84-04

WHEREAS, Alaska Natives have existed as a distinct and unique people from time immemorial and will continue to exist; and

WHEREAS, Congress in passing ANCSA picked an arbitrary single date of 1971 to determine who would be entitled to participate in the Alaska Native settlement; and

WHEREAS, it is not acceptable to Natives to create or continue different classes of Natives and exclude those born after December 18, 1971 or omitted in the original enrollment from the settlement; and

WHEREAS, the structure established in the Alaska Native Claims Settlement Act for implementing the Act does not provide an opportunity to provide Alaska Native elders special benefits which reflect their special contributions; and

WHEREAS, corporations may desire to issue special forms of stock to Native Elders; and

WHEREAS, inclusion of New Natives in the settlement structure should not affect revenue sharing under Section 7 of ANCSA.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the concept that ANCSA should be amended to give each corporation the option of offering additional stock to Natives, leaving the price, if any, up to the corporation and eliminating any liability for issuing stock at low or not cost.

(AFN Resolution Explanation)

RESOLUTION 84-04

New Stock to New Natives and Elders

Resolution 84-04 was developed to give corporations two options in issuing new or special stock. If approved by shareholders, a corporation could issue a special stock to Elders and issue new stock to Natives 1/4 or more blood quantum that were born after December 18, 1971. This resolution would permit shareholders to allow individual Natives of 1/4 or more blood quantum to automatically receive shares in a corporation upon birth. The stock might be voting stock that could be voted by a guardian or non-voting stock until the individual turns a specific age.

Each corporation will have to decide whether it wants to offer such stock and determine the price. For example, one corporation might give free shares to every Native born after 1971. Another corporation worried about diluting the present stock (reducing the economic value) could vote to charge full value for new Natives. Shareholders, again, would have to decide whether to allow dissenters' rights under this option.

This resolution would also allow corporations to offer stock to Natives who were alive in 1971, but did not receive corporate stock for one reason or another. The special stock to Elders provision permits a corporation to issue special stock to Native Elders where additional benefits could be distributed. A preferred stock issued to Elders could carry guaranteed dividends for example.

To protect corporations from legal liability, the 7(i) revenue formula where corporations share 70% of revenues from timber resources and subsurface estate would not be affected. The formula would remain the same regardless of changes in the number of shareholders.

LESSON 5: Stock Alienation—To Sell Or Not To Sell, That Is The Question

Time: Two or three class periods.

Objectives:

1. The students will gain an understanding of the ways in which stock can be lost.

2. The students will be able to identify the issues involved in stock alienation.

Teacher Notes:

The amount of information on the "1991 issues" is exploding. The topics of corporate mergers, acquisitions, and takeovers represent a significant part of this emergent material. Thus, we have decided to include an excellent videotape on corporate takeovers. This videotape, "The Takeover," presents a realistic attempt by an "outside" firm to take over one village corporation located on Lake Iliamna. We recommend that you show this tape prior to running the simulation. In fact, it would be best to have your students perform the simulation with students from another class who did not see the "techniques" employed by the aggressive outside corporation to gain control of the village corporation. This way the "surprise" tactics would have a much more realistic effect. Your students could play various roles as they try to acquire stock from the other, less knowledgeable students (who would be playing the villagers).

Procedures:

1. Show Part 3 of the videotape on "Mergers, Acquisitions, and Takeovers" which concerns the "takeover" (19 min.). (Counters vary on each VCR, on my machine, Part 3 began at #1160. The screen will show the cue board "1991 program 3 of 4: The Takeover. 18:37) Prepare your students by having them make believe they are "flies on the wall" watching a second, hostile corporation plan the takeover of their village corporation. After the videotape has been viewed have a discussion on:

   a. how they felt observing this corporation plan to take over their corporation.

   b. Could this happen? Is it a realistic scenario?

2. Organize your class for the simulation described in the following Student Activity Sheet as if the students were home during a typical evening when a visitor arrives from Seattle, interested in buying village corporation stock.

3. Assign roles—depending on the size of your class include the following:

   a. Elders, who are traditionally minded

    b. Mr. Gotit from the Buyit Corporation, aggressively seeking to buy stocks.

    c. other community members, representing realistic situations; such as several persons in need of cash, after having a poor season fishing or experiencing high health bills.

4. Rehearse the parts.

5. Begin the role-playing. Join Mr. Gotit as he goes "house-to-house" trying to convince the shareholders to sell their stock.

6. (Optional) When it is time for the role playing to take place, invite students from a different high school class and let them play some of the roles while some of your students take on the role of Mr. Gotit.

7. After Mr. Gotit (and associates, maybe) have visited the "community" hold an emergency corporation meeting to discuss what you should do.

8. Hold the meeting and come to a resolution(s). Put the student ideas on the blackboard or on butcher paper.

9. Have students read:

    a. AFN Recommendations in "1991: The Challenge That Must Be Met," Special Supplement to the Tundra Times, pp. 3 & 12. (See Lesson 1)

    b. "1991 Issues and AFN Workplan," Alaska Native News, May/June 1984. (See Lesson 1)

    c. "Take Our Land, Take Our Stock, Take Our Life," Alaska Native News, September 1984.

10. Compare the student resolution(s) to the AFN ones.

> "I compare losing control of our land by selling our shares to 'limited entry.' That gave us the right to fish in Bristol Bay and some of the people sold their permit and could not fish. They lost the right to fish."
>
> Kay Larson
> Bristol Bay Native Association

STUDENT ACTIVITY - STOCK ALIENATION - To sell or not to sell, that is the question.

Two elders in the village have insisted upon an emergency meeting of your Village Corporation. A Mr. Gotit has come to the village representing the Buyit Corporation of Seattle, and he has been going house-to-house having tea and offering people $30 per share for their Native Corporation stock. The two Elders who demanded the emergency meeting are afraid that people will sell their stock and the land will be lost. The buyers can do anything they please with the land without considering local interest, if they gain 50% of the stock.

You have already heard rumors that one family with six children is seriously considering the businessman's proposition. The head of the household had a bad summer fishing. If he agrees to sell the family's stock, they would have $24,000 (since there are 8 people in the family). That would buy a new snow machine and provide needed cash. Mr. Gotit has just come to this family. He is about to give them $24,000 in cash. What should they do?

What if more than 50% of the villagers sell their stock to this corporation?

Should each person have the right to sell his/her stock to make a profit?

Do you think each individual should consider it more important to keep the corporation in Native control, which would mean that sale of stock would be "restricted" (could not be sold)?

If you don't want Mr. Gotit and his corporation buying up the stock, what is it that you would like to have happen in the future?

Refer to the AFN Resolutions. What do you recommend? (Your teacher will put the best of your recommendations on the blackboard or butcher paper.)

Write your own proposal on this issue.

"Take Our Land, Take Our Stock Take Our Life"

1981 Sealaska joins the ranks of Fortune 1,000 top corporations in the United States;
1982 Sealaska loses $28 million;
1983 Sealaska, one of the largest corporations and private employers in Alaska, declares a $3.9 profit.

Sealaska, along with eleven other regional corporations created under the Alaska Native Claims Settlement Act of 1971, is unlike any other corporate entity in the world. Congress instructed the regional Native corporations to incorporate themselves "to conduct business for profit." Beyond the profit-making orientation, the similarities between Native and other corporations seem to end. On the one hand, Sealaska must expend considerable energies on the day-to-day operations of running one of the largest corporations in Alaska. On the other hand, the corporation must also respond to the social and cultural demands of its constituency. Many do not necessarily agree with or often even understand corporate operations and objectives. Others assume that Sealaska's corporate assets should be used for social and cultural investments. Added to their differing position's among the shareholders is the assertion by many non-Natives that corporate funds should replace or supplant state and federal services for Native people.

Sealaska's constituency are Tlingit and Haida Indians of southeast Alaska. They went to Congress to resolve their land claims. They along with other Alaska Native groups claimed ownership of Alaska's 375 million acres of land. Under ANCSA, Alaska Natives through their regional and village corporations were to be compensated nearly $1 billion for the extinguishment of Indian title to their lands. The ANCSA corporations would retain ownership of 44 million acres under fee simple title. Under this entitlement, Sealaska with 15,800 shareholders received nearly $200 million and 280,000 acres of valuable timber lands ($100,000 was distributed to the region's village corporations and at-large shareholders who were not enrolled to village corporations).

The differing objectives between Native peoples' cultural orientation and Congress's profit-making directive can be traced back to conflicting value systems about land. Traditionally, tribal or clan lands were held in common by the group and could not be sold by individuals. Utilization of tribal lands which was guaranteed merely through membership in a clan or tribe created social obligations to other members of the group. These relationships among tribal members insured the cohesiveness and continuity of the group. Western ideologies and laws on the other hand allow individuals and/or corporations to own land. Corporate use of land may result in economic returns to shareholders, but it does not create social obligations to or among shareholder members. Furthermore, western principles treat land as a commodity which can be sold or alienated. Unlike tribal membership and ownership of land, individual shareholders may divest themselves of their interest and shares in the land.

Ann Fienup-Riordan, an anthropologist, summarized the Natives aspirations and expectations of the lands claims in a paper prepared for the Alaska Native Review Commission in February, 1984. She found in the testimony given by Alaska Natives in hearings prior to the passage of ANCSA the five following major concerns:

1. Continuity in use and occupancy
2. The importance of cash compensation in order to facilitate economic development
3. Resolution of past social ills and full participation in the future
4. The achievement of self-sufficiency and self-determination
5. Continuity in cultural integrity

Sealaska's corporate chief, Byron Mallot, made the further observation during the February Alaska Native Review Commission Overview Roundtable Discussions that Native people transferred their hopes and aspirations to ANCSA. While Mallot didn't think corporate institutions could provide the answers to Native problems, he was initially optomistic that the "corporate structure could be used to do more than traditionally it had done, that it could be more than just an economic institution, that it could influence by our having control of the institution, political and social and other issues beyond just the economic." His experiences subsequent to the passage of ANCSA, he reported, was that it is difficult to focus on non-economic activities. He found that "corporations demand an incredible sense of discipline and economic focus in order to be competitive on the business side." Corporate assets and management and policy makers, he continued, must be totally focused on economic and business activities.

During the ANRC overview round table disucssions, Mallot also spoke on the contradictions and flaws in ANCSA. He made the observation that most Native people assumed that the land "was given to corporations as stewards for some long-term Native-oriented, subsistence-oriented, tribal-oriented, culturally-oriented purpose...." Mallot pointed to the fatal flaw in ANCSA - individual ownership and the possibility of selling shares to achieve personal economic gain which he felt could ultimately destroy the corporate institutions which hold the land. Mallot recalled that the battle cry in the days of land claims was, "Take our land, take our life." He continued that the dilemma facing Native people in 1991 when Natives can sell their stock will be epitomized by the cry, "Take our stock, take our land, take our life."

Sealaska shareholders have demanded that its board of directors and management focus on both the business and social and cultural activities. They have elected to the 18 member board of directors, individuals whose expertise and/or commitment lie in varying degrees in business or traditional cultural spheres. They have demanded that the corporation provide employment and educational opportunities as well as support cultural activities. They have also expected to share

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PACWEST which is a wholly-owned subsidiary of Sealaska Corporation ates a tug and barge service between Seattle and Anchorage PACWEST h employees, seven of whom are Sealaska shareholders.

Several of the shareholders were asked what they thought of Sealaska.

Mike Peratrovich formerly of Juneau who has worked as a laborer for WEST for the past 5-1/2 years responded,

"One thing is bugging me - Alago (which is one of a group of comp wholly-owned by Sealaska) is buying Kaiser Cement which is a comp of PACWEST."

George Makaily formerly of Juneau and has worked at PACWEST for two answered,

"I think Sealaska is great and I like working here."

Doug Peratrovich who is Mike's brother has worked for PACWEST for 3 adds,

"PACWEST is a great place to work."

Charmain Ramos of Yakutat a Sealaska Intern at PACWEST and Alaska Company says,

"I think Sealaska's rebound is good and they're getting stronger. I thin a great uplift to shareholders!"

Evelyn Williams of Ketchikan has worked as the office manager since M 1984. Evelyn responded,

"Sealaska has made tremendous strides, but in terms of shareholder em ment, Sealaska has a long way to go. Sealaska also needs to educate shar ders and non-shareholder employees about what Sealaska is. I find that is great misunderstanding about Sealaska." Evelyn also added, *"I relate to Sealaska politically than I do as an employee. Sometimes I find it to be advantageous to be a shareholder working for one of our subsidiary panies."*

George Quinto serves as the operation manager of PACWEST. He noted,

"There has been a good change in the attitude of Sealaska towards its sidiaries. While Sealaska has kept a good eye on its subsidiaries, it has allowed them to have more control in their internal management. I also the improvement in facilities and equipment has allowed us to maximize efficiency which is necessary in a highly competitive business."

through shareholder dividends in the economic wealth of the corporations.

The board of directors and management attempted to respond to these demands in a variety of ways. As Byron Mallot pointed out, corporate activities demand the total focus of its policy makers and management. In order to respond to this necessity without sacrificing the cultural and social expectation of its shareholders, the Sealaska Heritage Foundation was created. Under the leadership of David Katzeek, the SHF adopted the mission statement and series of goals and implemented a variety of programs designed to preserve and maintain the cultural heritage of the Southeast Indians. In addition, the corporation generously funded a scholarship program for shareholders pursuing higher education. The corporation also instituted an interior program designed to promote career ladder opportunities and mobility.

While the corporation supports shareholder hire, it has not been as successful as the shareholders think it should be. At each annual meeting, shareholders continually barrage management with questions about the rates of shareholder hire in the corporation and its subsidiary companies. In response to their incessant demands, management moved to hire shareholders to serve as personnel managers in the subsidiary companies. In one instance, the success was immediately apparent. Shareholder Tiny Phillip of Petersburg was hired to serve as Personnel Director for Alaska Brick. During her tenure, shareholder hire jumped from 1% to 19%. Shareholders are quick to point out that Sealaska's contribution to the state's economic growth and stability may be substantial, but it is meaningless to unemployed shareholders.

While the economic, social and cultural affairs consume much of the energies of the board and management, 1991 issues loom on the horizon. Chairman of the Board, Marlene Johnson, one of the two women on the male-dominated board, points out that Native corporations are already experiencing the effects of 1991. According to AFN statistics, approximately 25% of all Native corporations stock that has been transferred to date has been to non-Natives! Chairman Johnson has declared that the goal of Sealaska is to protect the land base and to retain the ownership and benefits for the Native shareholders. ■

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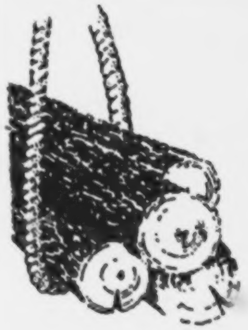

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LESSON 6: Indian Reorganization Act—The Battle For Sovereignty

Time: Three class periods.

Objectives:

1. The students will learn that ANCSA is part of the continuing Federal-Indian legislation.
2. The students will learn that some Native communities are interested in self-government.
3. The students will have an awareness of sovereignty as it affects Native communities in Alaska.
4. The students will be able to define "IRA government" and "sovereignty."
5. The students will be able to state reasons for and against having an IRA government after reading a case study and studying a videotape on Akiachak.

Procedures:

1. Set the stage by letting your class know that many Native communities are trying to find other ways to gain control over their lives. ANCSA did not provide for a political or cultural settlement. It left unfinished business. Again, have your class think of themselves as a community or a corporation that may need to make a decision concerning the type of local government that should be organized in their village.
2. Show the videotape "ANCSA: The View from Akiachak," (30 min.). This is a videotape of public hearings held on ANCSA in Akiachak. Natives voice concern that they were not consulted about ANCSA in 1971 and that the ramifications of ANCSA were never explained to them. David Case, the attorney for the Berger Commission, is present at the hearings; the program ends with an interview of Thomas Berger.
3. Have a class discussion and have students answer questions pertaining to the videotape (see related Student Activity sheets included with text material).
4. Have students read "Akiachak—A Case of Yup'ik Nationalism" from Alaska Native News, January 1984. Have students answer questions found on the related Student Activity sheet.
5. Have students read "Why Native Sovereignty Needs to be Controlled," by Christopher Batin (editorial), Alaska Outdoors, Nov./Dec., 1984 and answer the enclosed Student Activity questions. By reading this editorial, the students will learn that some people hold quite a different opinion about Native sovereignty. Students need to be aware of all sides of the argument.

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STUDENT ACTIVITY: ANCSA: THE VIEW FROM AKIACHAK

The videotape that you are about to watch was recently made at the village of Akiachak in the Kuskokwim Delta. The people have gathered to meet with Justice Thomas Berger, who is heading the Alaska Native Review Commission. As the video begins, residents voice their feelings and frustrations about ANCSA.

Please watch the videotape carefully. Take notes. Stop the videotape when David Case, a lawyer, explains important information. You may have to review this section three times before you understand the information!

1. What is mean by sovereignty?

2. What is it that the people of Akiachak and other Alaskan communities are wanting? (Hint: It has to do with ANCSA, land, and resources.)

3. Do you share the same feelings and thoughts as the people of Akiachak, regarding the land and who controls it?

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STUDENT ACTIVITY: READ AKIACHAK - A CASE FOR YUP'IK NATIONALISM

You can see that the people of Akiachak and other villages are deeply concerned about the land and who will control it. Although you may find the article, "Akiachak - A Case for Yup'ik Nationalism," is difficult to read, it further explores the issues of Native sovereignty. After you have read this article, answer the following questions.

1. What is it that the people of Akiachak are trying to preserve?

2. What questions do you have about IRA councils? Please list them and bring to the youth conference. We will try to answer some of them. Additional readings will be available to help you understand this issue.

STUDENT NOTE: Not all people agree with Natives having sovereignty over the land. It is important for you to see what they have to say. Please read Christopher Batin's editorial (an opinion by the editor of Alaska Outdoors). Answer the following questions.

1. What is the editor's opinion on Native sovereignty?

2. Do you agree or disagree? Why? Can you make an argument that would change this opinion? Go ahead, make it.

AKIACHAK

A Case Of Yup'ik Nationalism

"We must remember our children – that's what this election is about."

47

Ballot Number One

Do you accept the resignations of the Akiachak City Council and the dissolution of the Akiachak municipal government?

Akiachak Yupik listen to organizational reports.

The further erosion of Yup'ik culture and the potential for shifting control of tribal destiny to people and institutions outside of the Yup'ik community were the basis of this question being placed before Akiachak voters.

A special election was held in Akiachak on November 10, 1983. The issues were whether the community should have one local government and whether that sole governing body should be the federally-created tribal council instead of the city council organized under the State of Alaska.

One hundred and three voters, including both Natives and non-Natives, unanimously accepted the resignations of the city council members and the dissolution of the local municipal government. They also voted to transfer all City of Akiachak property over $25,000 in value to the federal Indian Reorganization Act council. Only two dissenting votes were cast on the third question which asked voters whether the IRA tribal government should be the sole local government representing Akiachak.

The action taken by the City of Akiachak to dissolve their municipal government is unprecedented in the history of Alaska. The legality of the process will undoubtedly be questioned. The implications of the dissolution move will be watched by other villages.

Akiachak is a Yup'ik community with a population of over 400 located along the lower Kuskokwim River in southwest Alaska. Akiachak made headlines in mid-September when the elected city council members resigned en masse.

The State's position on the dissolution attempt was reiterated in a letter to Willie Kasayulie, Chairman of the Akiakchak IRA Council. Mark Lewis, Commissioner of Community and Regional Affairs indicated in the letter that the resignation of the Akiachak City Council did not dissolve the City according to Alaska Statutes. Commissioner Lewis advised the tribal council that the dissolution of the city government could occur under the local option method in which a majority of voters approved of the dissolution. An alternative method of dissolution is through legislative action. While Commissioner Lewis informed Chairman Kasayulie that the State did not condone the actions of the City Council, he indicated that the Department of Community and Regional Affairs has the authority to temporarily assume the City's municipal power and administer the funds and accounts on behalf of the City.

The mass resignation of the Akiachak city council members was not an impetuous act. Community leaders had studied and discussed the issue for at least two years prior to their action. They had reviewed the beneficial as well as limiting aspects of both the State's city government and the federal tribal government. A number of factors had contributed to the selection of the IRA tribal council as the sole governing body and the dissolution of the city council.

> ***'The action taken by the City of Akiachak to dissolve their municipal government is unprecedented in the history of Alaska.'***

Foremost in the minds of the leaders were continued local governmental control by the indigenous population and the cultural survival of the Akiachak Yup'ik. They distinguish themselves as Akiachak Yup'ik—the real humans—apart from all others.

In the six hour community-wide meeting which preceded the special election, old and young residents spoke in their Yup'ik language. They repeatedly referred to Bethel. They did not want to become a community in which they would become the minority population. Moreover, they did not want to be subject to a local government controlled by non-Yup'ik. They knew that non-Natives' lifestyles and interests differ from theirs.

Samuel George, chairman of Akiachak Village Corporation: "We must insure that we protect our lands for our future generations."

They also feared that should non-Natives gain control of their local government, they would enact laws which could conflict with Yup'ik interests and cultural values. The community members cited recent events which indicated that federal and state hunting and fishing regulations conflicted with Yup'ik subsistence economic and cultural needs.

Tribal Chairman Kasayulie: "The world we live in today requires the knowledge and understanding of the majority in order for our culture to survive.

During the community meeting, William Lomack, one of the leading elders, spoke about the dawning of a new era for the community. He spoke in favor of a unified government and likened it to serving one god. He recounted that the Akiachak Yup'ik originally had only one governing body which pre-dated the introduction of both the city and tribal councils. He expressed his willingness to continue serving his people as an elder with the young men on the tribal council.

IRA Chairman Willie Kasayulie opened the community meeting which preceded the special election. The meeting was designed to insure that the community would together to address issues that affect all commuinity members. The community's educational, health and religious institutions and organizations had been invited to present reports on their current conditions and activities. Samuel George, who serves as chairman of the village council, also addressed the community members. He reported on the status of the corporation. George also stressed the need to protect their lands for future generations.

Kasayulie outlined the history of the Akiachak IRA Council. He noted that the tribal government was approved by the United States Secretary of the Interior on August 6, 1948. The by-laws and the constitution were unanimously ratified by a vote of seventy-four to zero by the tribal membership on December 3, 1948. He reminded community members that many who were present that they had voted to approve of the formation of the tribal council.

The IRA tribal government was selected by the community leaders over the municipal city government because of the differences in membership. Kasayulie reported that the membership of the Akiachak Native Community is restricted to Yup'ik residents of Akiachak. Membership could be acquired through birth or acceptance by the governing body. Only Yup'ik members of the Akiachak Native Community could run for office on the tribal council. This form of government would insure that only Akiachak Yup'ik would govern the community. Kasayulie pointed out that non-Natives could live within the boundaries of the Akiachak Native Community. However, community members would have to act through the tribal council to decide how to deal with the issue of non-Natives. Kasayulie reported that under the laws of the State of Alaska, "Any person of any race can become a member of any municipal [council] after living in a community for thirty days."

> ***'The dissolution of their city government was directly related to their fear of the loss of Native lands after 1991.'***

The community leaders did not discuss the Alaska Native Claims Settlement Act during the meeting. However, their activities at the United Tribes of Alaska and the Alaska Federation of Native meetings in October 1983 suggest that the dissolution of their city government was directly related to their fear of the loss of Native lands after 1991. At that time the restrictions on the sale and alienation of stocks in the Native corporations are removed. Stocks could be sold or lost to non-Natives. The Akiachak leaders actively promoted a resolution during these meetings which supports the "retribalization of Native land" or the transfer of corporation lands to the tribal governments.

Kasayuylie continued to discuss the beneficial and limiting factors of dissolving the city government. He pointed out that in all likelihood, State appropriations to the community would decrease. He added "Akiachak had survived thousands of years without State funds."

Fritz George, another IRA council member, stressed that the dissolution of the city council could protect Akiachak. He noted that under an IRA government the community could insure locol control and protect its subsistence lifestyle.

Prior to the election, Tribal Chairman Kasayulie emphasized that the election was open to all registered votes of Akiachak. He pleaded with non-Native residents, "Please don't think that we are prejudiced," he continued, "the Indian Reorganization Act under which our tribal government was established was enacted to protect Native Americans. We must remember our children, that's what this election is all about." ■

Community members prepare to vote on ballot to dissolve the city council.

Special

Editorial

CHRISTOPHER BATIN - EDITOR

Why Native Sovereignty Needs to be Controlled

Alaska is headed for a crisis involving fish and game management in rural areas. Already, the subsistence priority has been flagrantly abused by many Bush villagers. Native harvest of spring waterfowl while the birds are molting has been greatly responsible for the severe decline in Pacific Flyway brant and Canadian geese. Indians and Natives claim that spring waterfowl hunting is necessary to preserve "tradition." Yet how traditional is it to run down the birds with airboats and groundswat them with 12 gauge shotguns? Traditional methods include clubbing and entrapment, but these are too "old fashioned" according to some members of these tribes.

Abuse of other resources through modernization; i.e. shooting caribou from snowmachines, using aircraft to herd Dall sheep, and the harvest of hundreds of caribou and rainbow trout for dog food makes subsistence a joke in most areas, especially when a local household that qualifies for subsistence earns $30,000 or more a year.

Because of these inequalities, the federal and state government has been searching for answers to the subsistence question. This has scared many Native villages, and prompted them to do whatever is necessary to keep the federal government out of "their Indian and Native affairs." Despite the Alaska Native Claims Settlement Act, which gave the Indian and Native groups cash and land settlements in exchange for their claims to subsistence priority and aboriginal rights, these groups are now pushing for sovereignty.

In an interview with the Fairbanks News-Miner, Alaska Fish and Wildlife Federation and Outdoor Council Executive director Ron Somerville stated, "Any granting of sovereign rights beyond what is granted in our Constitution is only going to create bigger problems related to fish and wildlife management and access to lands, and it would almost be an overturning of the statehood act."

Somerville also stated that Alaska is looking for short-term solutions to complicated problems, i.e. subsistence and sovereignty.

The State of Alaska should heed well the advice of other states that have experienced similar problems with sovereignty. Few know the issue better than Verna Lawrence, City Commissioner of Sault Ste. Marie, Michigan. In a well-received speech before the Outdoor Writers Association of America's national conference in Traverse City, Michigan this past year, Lawrence pointed out the problems she and the State of Michigan are having with Native sovereignty. Below are the highlights of her speech. Alaskans would do well to heed the advice, before it's too late.

• • • • •

"When I became involved in the Indian issue, I was shocked to discover the "MEDIA SILENCE" which prevailed. It was nearly impossible to get any information on the Indian problems. We had to dig for facts, and often ran into a brick wall. To say that the news media was reluctant to print anything reflecting on the Indian is an understatement. Unfortunately, it is still true to a great extent, that the Indian issue with all its various and widespread problems is not being discussed publicly. The problems will never be solved until they are examined objectively, honestly, and with an open mind, free of any accusation of racial bias and free of the Great American Guilt Syndrome.

"In our particular case, City of Sault Ste. Marie vs Andrus, we were before our time. There is no doubt in my mind that the decision will be overturned one day and our efforts will be vindicated. In my opinion, there was no due process given by the government to the city, and the reservation was established for a tribe who was recognized through the political process instead of the accepted procedures. There are NO full blood Indians on the Sault Ste. Marie reservation. In fact, the whole tribe is composed of dilute bloods and the blood quantum of the so-called chief is rumored to be only three-sixteenth! This is a violation of the 1934 Indian Reorganization Act which requires a chief to be at least one-half Indian. No government agency reacted to a protest of this violation, which is a typical government reponse to an Indian problem. It is characterized as an internal tribal problem outside goverment intervention. vention.

"Indian Treaties were written as an agreement between a State or the Federal Government with and for the full-blood Indians ONLY. Any benefits including fishing given to the half-blood Indians were definitely requested by the the full bloods. Today, governments are dealing with dilute bloods and IF there are no longer any full-blood Indians, then the treaty guarantees NO LONGER APPLY and the treaties should be abrogated!

"Blood quantums should be standard for every tribe and set by the Federal Government, after thorough and impartial research of blood lines. At present, tribes can certify their own quantums. In the State of Michigan we have people who are 1/32 Indian blood degree fishing with an Indian Fishing card!! They are 1 part Indian blood and 31 parts something else!! In addition, the original Indian fished for food to feed his family. The sophisticated methods that make it possible to rape lakes and streams were not available when treaties were written, and this ability was not the intent of government when treaties were written.

"New Indian reservations are being created. One was established within the corporate boundaries of the City of Sault Ste. Marie, Michigan without the consent of City residents. Reservation residents may vote in every election and receive every social service benefit, yet pay NO taxes. Reservations exists on taxpayer dollars, yet are sovereign nations. The definition of sovereign is: supreme in power or authority, having independent authority, power to govern without external control, supreme political power in a State. Even though reservations are independent sovereign states, they are exempt from the Freedom of Information laws and the Open Meetings Act. Loss of personal freedoms can occur, as Reservation residents are not governed under the U.S. Constitution, as the Tribal Constitution takes precedence. That means that Reservation residents are deprived of the protection of our Constitution and further no State or local Government has any control over that land or what occurs on that land. There is a loss of jurisdiction, as codes and ordinances do not apply and cannot be enforced. Reservation businesses pay NO property taxes and can operate in unfair competition with private enterprise. Party stores sell non-taxed items, gas, cigarettes and liquor. In cities where reservations exist in close proximity, checkerboarding may occur when individual Indians put their land in trust to avoid municipal taxes and local codes and ordinances. Tolls have been placed on roads within Reservation boundaries in Western States. They indulge in casino gambling, bingo not subject to State Law, polluting industries, unfair business competition-subsidized by taxpayers, and control of our natural resources, such as coal reserves and water. Water is our most precious resource and it belongs to all of us.

"No benefits should be granted or denied on the basis of race. Surplus food in our area is distributed to needy Indians only!! All other people are excluded. Don't white and black people starve the same? When Federal dollars are given to Tribes, advertisments are inserted in our local paper which state Native American preferred. I resent this statement, anyone born in the United States IS and SHOULD BE considered Native American!! This is a prime example of reverse discrimination!!

"Because I disagreed with the policies of the Federal government and opposed the creation of an Indian reservation within the corporate boundaries of Sault Ste. Marie, Michigan, I was harassed by the Justice Department, the F.B.I., and the Tribal Attorney who was allied with Legal Services. My personal safety was threatened by telephone calls. At a Congressional Hearing on Indian Fishing, at which I testified, a guard was assigned to protect me. I opposed the so-called Indian person with only 1/32 Indian blood degree receiving the benefits of Indian fishing when treaty rights were granted to full bloods ONLY!

"In the State of Michigan, the fishing resource is being controlled by Indian tribes which let dilute blood members fish under the guise of Indian fishing. The state of Michigan spent over two million dollars of taxpayers money to fight the case, but bungled it when they did not hire a specialist in Indian law. Through the state's ineptness in handling the case and the maneuvering of the tribes to see that the case was awarded to ultra liberal judge Noel Fox, this one great state resource is in jeopardy. This suit was initiated by the Legal Services in Sault Ste. Marie, Michigan.

"Problems are spreading at an alarming rate all over the United States. The Onieda Tribe in Green Bay and DePere Wisconsin is claiming 65,000 acres for private homes, prime farm and dairy land, business and airport properties, and the industrial park. In Seneca Falls, New York, the Cuyuga tribe is claiming 65,000 acres of public land. The tribes are encouraged in these assaults on the American taxpayer by federally funded agencies, Justice Department, Interior Department, Legal Services Corporation, Ford Foundation, and various church organizations which have NO idea how their money is being spent. And then to protect themselves, the U.S. taxpayer must pay again and again as problems escalate. Soon the financial burden is beyond the ordinary person or a small community. In Lac du Flambeau, Wisconsin a tribe is attempting to tax non-Indian businesses. This is taxation without representation and, if my memory is correct, there was a war fought over this issue!

"Unfortunately, Indian culture has been dead for years due to intermarriage and the adopting by Indians of a more comfortable and progressive lifestyle. No Indian person today would forsake his automobile, indoor plumbing, central heat, grocery stores, schools, health care, and on and on. Of the Indians in our area, no one speaks the Indian language or lives by the old customs and few remember the old ways. The Indian person must live today in the modern world, with education, skills, and a job to survive with dignity. This is NOT what the tribes want to hear, as to acknowledge the truth would destroy their power base and source of government funds. But remember, it is NOT in the best interest of the TRIBE that the individual Indian be independent. If they were to become self sufficient and self-supporting, contributing members of society, the tribe COULD NOT use them in the head count for federal funds.

"Reservation life is a prime example of unworkable socialism and is a lesson in despair, where individuals are entirely lacking in hope and where drugs, alcoholism, and suicide are rampant. The U.S. Public Health Service, which supervises Indian Health, has not yet addressed the number one health problem of the Indian - Alcoholism! In my opinion, reservations are a form of genocide, where intelligent human beings are exiled for a lifetime and conditioned to be totally dependent on the handout from taxpayers. This is NOT a situation which affords the individual satisfaction, respect, or dignity.

"The Indian person has to insist on the educational or skill benefits they are entitled to at a blood quantum of one-quarter to insure they are prepared to enter the job market with proper training so that they will develop some self confidence and belief in their own ability to provide for themselves and their dependents by holding a steady job.

"Since tribal leaders are too greedy for money and power, too self serving to view the problems objectively and in the best interest of the Indian person, and are unwilling to curtail their unceasing and excessive demands on the taxpayer for money, it stands to reason that Congress MUST review the problem and abrogate the treaties as the ultimate solution to the problem. My question is, how can the U.S. government have a treaty with a U.S. citizen?

"As a solution to the many problems facing the states and the whole nation, two issues must be addressed by the U.S.government:

"1. Indian Blood degree, (quantum). At present, anyone can declare themselves Indian. Congress MUST determine who is an Indian and set a definite quantum for ALL tribes. The minimum quantum should be one-quarter for ALL benefits with NO exceptions.

"2. Treaty Rights;
Treaty rights were granted to full bloods ONLY. If the treaties no longer apply, then the treaties should be abrogated, the full bloods paid off, the reservations abolished, and these Americans assimilated into their rightful place in society. I am an advocate of full rights and responsibilities for ALL citizens.

"In closing, I challenge you to report on the Indian issues and how they affect our resources in a fair and objective manner, without being swayed or intimidated by feelings of guilt. Anyone who has traced their ancestry can find inequities in past history which they could apply to themselves if they choose to wallow in self pity. You and I ARE NOT responsible for what happened in the early 1800s and should NOT let ourselves be swayed back into the "Poor Indian Syndrome" or the Indian problems will NEVER be solved."

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For more information on how you can help battle Native Sovereignty, write Alaska Outdoor Council, 3780 McGinnis Drive, Juneau, AK 99801.

LESSON 7: ANCSA—Part of The Continuing Federal-Indian Legislation

Time: Three to four class periods.

Teacher Note: Do this lesson if the class is not aware that ANCSA is part of a continuing series of Federal-Indian legislation. The issues pertaining to this are covered in the Arnold text; unfortunately, the topic is difficult to understand and the Arnold treatment is superficial. The best thing to do is review the charts in Arnold, on pages 29 and 64, which outline some of the Federal-Indian legislation.

Objectives:

1. Students will recognize that ANCSA, IRA's, and other Federal-Indian legislation is part of a continuing relationship between the federal government and Native peoples of the United States.
2. Students will understand that Native people have legal mechanisms available to help them protect their lands and that IRA governments are one such possibility.
3. Students will become aware of a number of treaties and laws agreed to by both the United States government and Native peoples.

Procedures:

1. Conduct a review discussion on the history of Alaska Native people and Federal laws.
2. Have students read appropriate sections from Arnold text on the evolving Federal-Indian relationship, (pp. 23-26, 40-43, 48-51 [treaty provisions and breakdown], 68-70 [Organic Act], 78, 87 [IRA government]).
3. Have students read the article, "Outside Indians Give Views on ANCSA" Tundra Times (no date).
4. Have students review the enclosed IRA Information Packet from the Tanana Chiefs.

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STUDENT ACTIVITY: READ SECTIONS IN THE ARNOLD BOOK AND THE ENCLOSED MATERIAL ON IRA'S

You might wonder what do all of these laws have to do with subsistence, and your way of life. Well, in fact, they have very much to do with it. As you probably already know, Native people a long time ago had one idea of land ownership, while Europeans had a different idea. With contact between the Russians and then the United States, a clash of ideas and laws over who owns and who controls the land occurred. This dispute (clash) began increasing with the United States' purchase of Alaska from the Russians. But, did Native people of Alaska sell their land to the United States? What right did the United States have in buying somebody else's land?

These things happened a long time ago. Yet they are still affecting you today! Control over the land is still an issue. ANCSA only partially settled it. Laws made by the United States offer some options for protecting Native lands. Understanding the Federal-Indian legislation will help you understand the importance of the 1991 issues.

Read the Arnold book, (pp. 23-26, 40-43, 48-51, 68-70, 78, 87). Briefly describe the following terms.

ABORIGINAL TITLE -

TREATY OF CESSION -

ORGANIC ACT -

INDIAN CONCEPT OF LAND -

IRA

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Tundra Times

INSIDE: [illegible] of Education Page 12

Inupiat Paitot
People's Heritage

Den Nena Henash
Our Land Speaks

VOLUME XXI Number Eleven USPS 644-840 [illegible] 1984 [illegible] ISSN 0049-4801 [illegible] Alaska

Jan Masek and Beverly Jerue set Iditarod history with their wedding ceremony at Finger Lake in the early stages of the Iditarod Race. For more pictures see page 3.

Photos by Norris Klesman

Clark changes OCS leasing

By Linda Lord-Jenkins
Tundra Times

U.S. Interior Secretary William Clark has removed some offshore oil tracts from the 1984 and 1985 leasing schedule but has refused to remove a planned leasing for offshore areas near Kakto[illegible] conduct subsistence whaling activities.

Clark said in a letter to Gov. Bill Sheffield that the Kaktovik area has too great a potential for high oil and gas deposits and there is too much oil industry interest in leasing the tract for him to remove it from the leasing schedule.

Clark did, however, make several concessions on oil leasing schedules in other areas, including reducing the size of two proposed sales, and removed one tract from consideration in the Bristol Bay area.

He also agreed to limit lease sales to no more than three per year.

Clark also deleted Sale 85 in the Barrow Arch from the five-year oil and gas leasing schedule to conduct a further assessment of operations in heavy ice conditions.

North Slope Mayor Eugene Brower Said Monday the Clark

(Continued on Page Two)

Kasigluk Elders focus on preserving way of life

By Louise Donhauser
Courtesy Calista Corporation

Kasigluk – "Preserve our way of life," Elders of the Yukon-Kuskokwim Delta urged at a Kasigluk conference.

About 75 Elders from the Calista region gathered in the Kasigluk gymnasium from March 1 through 3.

The Elders spoke in Yupik which was translated to English by Daisy Lamont and Oscar Kawagley.

The Elders spoke of the old Yupik ways which they feel still have value today.

"The way of correcting children isn't the same now," one Elder said.

Children were never hit in the face and they were never startled awake.

Another Elder, Curt Bell of Hooper Bay, said he was not taught to read and write. But he did learn survival skills.

"Sun shining on ice will direct you to land. Feathers must be put underground. One day you may need those feathers for warmth.

"Your snowmachine doesn't tell you when it will break down. If you are lost on the tundra, dig a hole and go in it. Wear mukluks on the tundra," Bell said.

While the Elders shared their past experiences they also discussed today's issues such as education, alcohol and the retention of Yupik names.

When children enter the classroom the Yupik way should not be left behind, said John Peter of Tuluksak.

"Kids are going to school and learning Western ways. Yupik ways should be included in the school system," Peter said.

He felt the younger generation should be included as speakers.

(Continued on Page Eleven)

Outside Indians give views on ANCSA

By Bill Hess
Tundra Times

After a week of testimony challenging and championing the concept of Indian sovereignty, United Tribes of Alaska vice president Sheldon Katchatag issued a strong plea for Native-owned lands in Alaska to be placed under the control of village tribal governments.

"We at the village level have never been asked how we feel about these things," spoke Katchatag before Canadian Judge Thomas Berger, head of the Alaska Native Review Commission.

"What we're asking for is the respect that we have the ability to manage our own affairs." Katchatag lives in the Bering Sea village of Unalakleet. He told how decisions governing the land and lives of the village people are always made by outsiders, resulting in unnecessary complications and problems for the villagers. "Even if you have our own best interests at heart, it's still considered meddling," he explained.

Katchatag made his comments during the second week of overview hearings being held in Anchorage by the ANRC. The commission was formed last summer by the Inuit Circumpolar Conference, a coalition of Eskimo groups from across Alaska, Canada, and Greenland, to conduct

(Continued on Page Eight)

Emergency aid goes to Elim, Mt. Village

Gov. Bill Sheffield has signed state of emergency declarations for the villages of Elim and Mountain Village which are having the same problems with water supplies that promoted a similar state of emergency declaration for Unalakleet last week.

The declarations were made to help the villages repair water line problems that have forced them to get water from creeks or central water sources, said Lloyd Turner, director of the Alaska Division of Emergency Servi[illegible]

A maximum of $2 mi[illegible] will be spent to repair several problems in Mountain Village that have forced residents to walk for their water.

Turner said that Mountain Village has two water systems, one state and the other main[illegible] Public Health [illegible]

(Continued on Page Eleven)

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SPECIAL REPORT

Outside Indians give views on sover

(Continued from Page One)

a two-year study into the effects of the Alaska Native Claims Settlement Act on the indigenous people of Alaska.

The World Council of Indigenous People has since joined ICC as sponsors of the commission. During a week of village hearings in Emmonak and Tununak, and at the first two weeks of overview hearings in Anchorage, the commission heard repeatedly the concerns many Alaska Native people feel for the fate of their lands once the regional and village corporations created by ANCSA become subject to taxation and alienation into non-Native ownership in 1991.

Another major concern has been the status of Alaska Native children born after December 18, 1971. They were not given either shares or land under ANCSA, making them the first generation of Alaska Natives who, by law, are cut from the ties their ancestors have always had with the land, unless they receive shares through inheritance or purchase.

"There is resentment by the man in the village that this was decided without him," said Katchatag, adding that in his opinion the best solution for solving the problem would be to take the lands, both surface and subsurface, which now belong to the village or regional corporations and turn them over to the village Indian Reorganization Act and traditional tribal governments.

Under ANCSA, which left Alaska Natives with 44 million acres of land and just under $1 billion in compensation for lands lost, the 12 regional corporations own the subsurface rights to the village lands as well as their own. Katchatag suggested that perhaps some of the regional lands could be turned over to the village governments as well.

Although Katchatag's plea was not a new one, it differed from most similar proposals in that it did not call for the lands to be held in trust for Native people by the federal government. On most reservations and Indian trust lands, the United States government considers itself the legal owner of the land.

Under this concept, the land is held "in trust" for the use of the Native people by the U.S. Secretary of the Interior. It is not subject to taxation, and cannot be sold or transferred to non-Native ownership without an act of Congress.

While many proponents of tribal government ownership of land in Alaska have argued that the problems of 1991 and the children born after ANCSA, could be solved by having ANCSA lands taken back into trust, Katchatag argued that tribal ownership would be enough to secure their safety.

"I really don't feel the Native people would entirely trust the federal government after the treatment they have received," Katchatag explained. "We trusted everything, and I mean everything, about our lives to the federal government and now we have to claim it back!"

Katchatag also questioned whether he would want a nation with a $1.6 trillion national deficit or whatever" to "hold anything in trust for me."

He did not accept the argument that Native people are any more incompetent in dealing with western society than are those people in the Bureau of Indian Affairs and elsewhere who have been given so much say about Native life in the past.

"If our ship is going to sink then, dammit, let us be captain and sink it ourselves rather than let someone else shoot it out from under us," Katchatag pleaded.

Katchatag's comments came at the end of a week devoted to looking at ANCSA from a national perspective. The week was kicked off with a paper presented by Dr. Joseph Jorgensen, a professor of history and anthropology at the University of California and author of "The Sun Dance Religion."

The paper traced the history of Native Americans, primarily in the Lower 48, from the first European contact to the present. What it revealed was a "pendulum" approach used by the federal government in dealing with aboriginal people: a policy swinging back and forth from efforts to deal with Indian tribes as distinct governments and cutting attempts to "terminate" Native Americans as distinct peoples with cultural and governmental identities; to assimilate them into mainstream America.

Ada Deer recalled the confusion created among her people, the Menominee Indians of Wisconsin, during the latest period of termination policy.

In 1954, Congress passed the Menominee Termination Act, which went into effect in 1961. Instead of a reservation, the Menominee found themselves living in a county as "certificate holders" in a state corporation. Their lands were fee simple and could be taxed, sold, and owned by anybody.

The tribal rolls were closed; newborn children were not recognized as Indians by the federal government. Services, such as medical care, provided by the government were ended.

"My people suffered a great many hardships and social injustices as a result," Deer said, noting that with the lack of medical care there was much illness and death. Menominee county became not only the newest, but also the poorest county in Wisconsin, she added.

"It was a devastating act," Deer said. "Social devastation, psychological devastation . . . I remember a traditional man who told me 'one day, I'm an Indian, the next day, I'm not. Yet I am the same person!' He did not understand the legal complexities of the termination act."

Tim Coulter

Russell Jim: his people won back a sacred mountain

Few Menominees did, Deer said, adding that the widely held notion that the Menominee people consented to termination was in itself a misconception. The termination act followed a claims settlement where the Menominee people were awarded $8.5 million as a result of mismanaged trust over their lands and affairs by the federal government.

A bill in the House called for each Menominee to receive individual payments of $1,500 of that, but the Senate changed the legislation to read that the Menominees would have to agree to termination before they could receive any money.

Deer said that although few of her people had any idea of what was going on, a meeting was held to gain Menominee approval of the idea. Out of about 3,000 tribal members, 169 came and voted for termination, with five opposing it. Shortly afterward, some of the tribal members figured out what was happening, Deer said.

Another meeting was held, and 197 people came, including many of those who had voted for termination before they understood what it meant, and all of them voted against the act. Their senator, however, took the first vote to Congress as evidence that the Menominee people favored [illegible] to terminate them, and the act passed.

"All major policies on Indians have come from the top down," Deer noted, "not on the needs and aspirations of informed people at the grass roots level."

Menominee reaction resulted in a grass roots movement of the people which turned that policy around, Deer said, and finally resulted in legislation "which came from the people, it came from the bottom up."

Deer explained how the Menominees had always felt free on their wooded, lake-dotted lands. Free to come and fish or hunt without asking anybody's permission.

Such freedom ended with the act, and opposition grew. The last straw came when a group of youngsters were forced to leave a favorite lake. Their angry parents staged a demonstration. Lawyers were contacted to see what could be done. Deer became a major force in the movement for restoration which was to follow.

At first, Deer and other supporters of restoration were dismissed as "agitators and crazies." Restoration would be impossible, the people were told. Some Menominees, who were profiting from the selling of traditional land and profiting in other w[illegible] the non Indian interest[illegible]ing in Men[illegible] the movement, Deer said.

Although Deer expresses caution when it comes to lawyers, she noted that her people had been able to employ some very dedicated and concerned lawyers who were willing to put aside their own ideas and work only for what the Indian people told them, the Menominees were able to prevail. Deer noted that the public attention gained through the media by the demonstrations also helped.

The Menominee Restoration Act was signed in 1973. Some lands had been lost, but because the county was mostly populated by Indians, most were retained. Once again, they could not be taxed, or sold to non-Menominee. The rolls were opened up, and the tribal status of newborn children was once again recognized.

The tribal government was reconstituted. Although the county government was left in place as an effective means to work with Wisconsin for state services, the tribal government established its own courts and police and took control over the land.

but, Deer noted "the land is safe, and the control is back in the hands of the Menominee people."

"Your presentation sounds an awful lot like what we are going through up here," Al Goozmer, president of the IRA tribal government, [illegible] told Deer

[illegible] Nine)

ignty, termination, land ownership

(Continued from Page Eight)

after her testimony.

The IRA governments, formed under the Indian Reorganization Act of 1934, are being promoted by many tribal government advocates in Alaska as the best form for the villages to use to assume control over their lands, and to exercise the sovereignty they maintain they have had since long before Columbus discovered America.

Russell Jim, the former Chairman of the Yakima Nation in Washington and a noted Indian rights activist, spoke strongly in favor of tribal sovereignty but raised questions as to whether the IRA governments were the best way to express such governing powers.

"The Yakima were opposed to being an IRA tribe and refused," Jim recalled what happened early in the century when the BIA had tried to convince the tribe to accept IRA status. [illegible] that as a nation, the tribe had signed a treaty with the U.S. government.

The tribal leaders felt the full extent of their traditional powers would be better preserved and maintained by keeping the government which had had the power to deal on a one-to-one basis with the U.S. in place.

They also objected to a provision in the IRA which requires tribes to obtain permission of the Secretary of the Interior before they can make changes in their tribal constitutions. Jim noted that many IRA leaders attending a conference in Sun Valley, Idaho, had expressed disenchantment with their role under the act.

Some had wanted to make changes in their constitutions, but the secretary had not approved. "The tribes had a direction they wanted to go," Jim noted, "but if he didn't sign, they didn't go anywhere."

Jim expressed strong feelings about the relationship of his people to the land, and his thoughts about the taxation of Indian lands. He noted that before the Yakimas signed the treaty, they had a homeland of 12.1 million acres. "We ceded 10.8 million acres to the state of Washington and retained 1.3," Jim said, noting that the land making up all of the states came from Native Americans.

"We feel we have paid our taxes for all time!" he stressed.

Jim also had strong feelings about working to win back lands wrongfully taken. Under the Nixon administration, Mount Adams, a volcano sacred to the Yakima, was returned to them along with 21,000 acres. The move provoked anger among many non-Indians. "This year, Mount Adams, next year, Rainier," Jim recalled their protests.

Jim credited the success of the Yakima to support they received nationwide, including from the Native people of Alaska.

Tito Naranjo, the past president of the Santa Clara Pueblo Tribal Council and current Professor of Psychology and Social Services at Highlands University in New Mexico, also spoke of land his people had won back.

Unlike many tribes, the Pueblos had not fought, made treaties with, or signed agreements with the federal government, Naranjo noted. When Spanish missionaries and subsequent settlers moved into their region, they had accommodated them peacefully. Always they had defined their territory spiritually, as it was bounded by four sacred mesas.

In 1906, the federal government placed sacred Pueblo land, including Blue Lake, under jurisdiction of the U.S. Forest Service. The Pueblos believed that their people had originated from under Blue Lake and would return there after dying.

They could not explain this to the U.S. goernment, so instead insisted they owned the land. The government yielded only so far as to offer them $279,000 in compensation. The Pueblo refused. "How can anybody think of taking away the place that we go back to when we die?" Naranjo explained.

Although they never could fully explain their religious beliefs to the government or to any others outside of their tribe, the Pueblos persisted in their insistence upon not accepting any compensation, or conceding that the U.S. had any ultimate domain over their land.

They won it back under the Nixon administration. Naranjo also noted how the Pueblo had maintained their traditional form of religious government. First the Spanish had brought in a new form of government for the people. They agreed, and selected the appropriate officials. These, however, remained under the power of the religious leaders.

Then the U.S. came and brought the IRA form of government. Again, the people went along with it and elected the necessary government officials. It was the religious leaders, however, who selected the candidates.

"You can argue that a religious government is not democratic," Naranjo noted. "The point that the Taos Pueblo was making is that we have the right to define how we are going to live. Either you are going to have to kill us off, or accept how we live as a people."

Tim Coulter, executive director of the Indian Law Resource Center in Washington D.C., challenged the very basis of Indian law and policy followed by the U.S. in dealing with Native American people.

Coulter noted that when the U.S. Constitution was adopted, it defined the relationship between the state and federal governments, between the U.S. citizens and their government.

"It did not say anything about the relationship between Indian governments, or Alaska Native governments, and the U.S.," Coulter said. Cooulter described the situation as a "legal vacuum."

The treaties signed between the government and Indian tribes demonstrated that they were sovereigns, but without any law to guide them, the Congress had arrogantly adopted the notion it could take any action regarding Indian tribes it wanted, Coulter noted.

The Fifth Amendment prevented the taking of property from any American citizen without due process of law, but the same protection was not applied to Native Americans.

Coulter noted that even many Supreme Court cases which appeared on the surface to be Indian victories were not really so certain. He noted a recent case where the Cheyenne River Sioux of South Dakota successfully fought a claim that their reservation had been reduced in size. While they won, the court added if it were the intent of Congress to reduce the reservation, they certainly had the jurisdiction to do so.

Calling the situation lawless, Coulter argued that Congress does not have any underlying right to Native American-owned lands. "How on earth did the U.S. ever get the idea it had anything to do with Native [illegible] up here?" Coulter asked. "Did they get it from the Russians? Heck no! You can't give what you don't have!"

Coulter urged that if village governments felt they had a right to do something, that they take action on it. He noted a recent case where a Paiute woman ran her cattle on traditional lands despite government insistence that she could not. She finally won a concession that she had the right to do so.

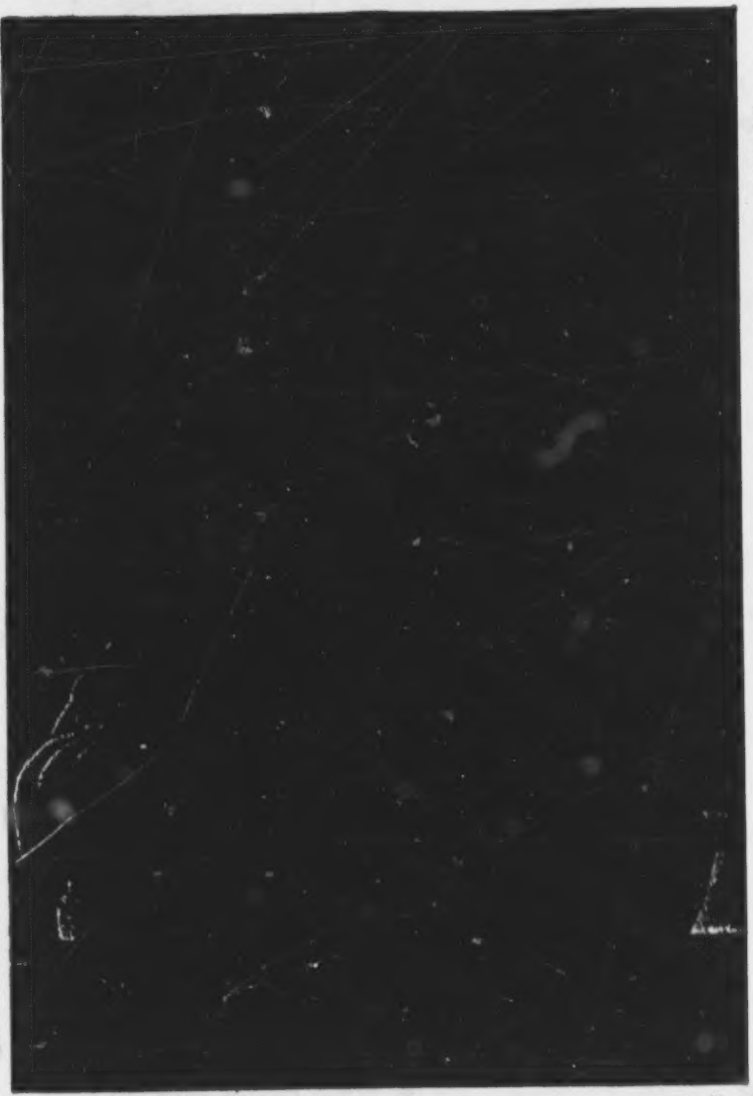
He noted further a group of Mohawk Indians in New York who claimed territory and said they had the right to exercise self-government. They held state law enforcement officials back at the boundary, sometimes with loaded weapons. Recently, their right to govern themselves on the reservation they created has been legally recognized, Coulter said.

No panelist created a greater stir in the meeting than did Ralph Lerner, author of the book "Reds and Whites: Rights and Wrongs." Lerner took virtually every argument which was presented and turned it around, cautioning Alaska Native people that as they sought to make any changes in ANCSA, they would find themselves butting up against attitudes very different than their own.

Lerner was critical of the use of the word sovereignty, arguing that when it came down to the bottom line in this country, there was only one sovereign, one entity that could declare war on foreign nations and take other final actions of a sovereign.

Lerner argued that when Alaska Natives or American Indians carelessly threw the word sovereignty about, they could solidify the opinions of many people against them; people who might take no exception to a term such as self-government.

The meetings will continue this week as panelists gather from Australia, Canada, Greenland, Denmark, and Norway — all nations with aboriginal and [illegible] viewpoint.



Tim Coulter: If you want to be sovereign, act sovereign.

I. R. A.

INFORMATION
PACKET

TANANA CHIEFS

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IRA stands for "Indian Reorganization Act," which permits an Indian tribe or Alaskan Native village to organize for its common welfare by adopting a guiding constitution. The constitution spells out the purposes of the organization, defines the membership and the powers of the organization.

In comparison, a 2nd class city is a government organized under the state government while an IRA is a Native government recognized by the federal government.

In Alaska, a group of Native people with a common bond of occupation, association, or residence are eligible to organize an I.R.A. The tribe has the power to determine its own membership and it will always be recognized as eligible for federal Native programs and services. This could be important in the future if federal programs become restricted to those who can point to some sort of tribal membership. In this way, children born too late to be enrolled under ANCSA could establish themselves as Alaskan Natives for other programs available only to Alaskan Natives.

An IRA council can do almost anything it wishes unless specifically forbidden by federal law or its own constitution. It can be an organization much like a Native Association that gets its funding from community-wide bingo games or monies; it can be an organization much like Tanana Chiefs Conference that handles contracts and grants from the state or federal governments; it can also be a profit-making organization much like a village store, or electrical cooperative, or water and sewer system company; or it can be a municipal type of government where tribal laws and ordinances can be passed and enforced by the IRA council members and its staff and in some cases, by state and federal officials. It has the ability to be eligible for private funds (foundation funds) or for public funds (state and federal funds) depending on the Internal Revenue Service tax rating for which the IRA applies. It is pretty much what the village residents who are members of the IRA want it to be.

IRA councils and traditional councils have the same functions. The IRA council, however, has more recognition when dealing with the federal government.

INDIAN REORGANIZATION ACT

GENERAL INFORMATION:

"IRA" stands for Indian Reorganization Act. That act was passed by Congress on June 18, 1934. Originally, the Act did not apply to Alaska, but in 1935 and 1936, however, Congress amended the Act so that today all the provisions of the Act apply to Alaskan Natives. Section 16 says that "any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws,..." The Alaskan version goes on to say that "groups of Indians in Alaska not recognized prior to May 1, 1936 as bands or tribes, but having a common bond or occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws..." In other words, Indians not living on reservations do have the right to organize under the IRA.

POWERS OF AN IRA

In 1934, the U.S. Solicitor's office issued an opinion which listed the powers of an Indian Tribe. An IRA has all of these powers which include:

1) organize a government including providing for a chief and/or council as well as defining their powers and duties,
2) make rules to determine who are and are not members,
3) to make rules governing the marriage, divorce, and custody of children of members not against state law,
4) to make rules concerning members' property and the inheritance of members' property, not against state or federal law,
5) levy dues, taxes, or license fees on members and non-members living or doing business in the village,
6) to remove non-members from trust land, except for government officials, and
7) to judge disputes between members and violations of local ordinances by members.

COUNCIL ORDINANCES

The question of whether I.R.A. and traditional councils can pass municipal-type ordinances is complicated. In short, the answer is yes in many instances and no in other instances. To determine whether a Native government ordinance is valid, four things must be considered:

1) Does the ordinance deal with a major offense, a minor offense, or a regulation?

Generally, Native governments retain all authority not taken away by an Act of Congress. Congress has taken away the power of Native governments in major offenses such as murder, manslaughter, arson, assault, rape, etc. In Alaska, the state is charged with these responsibilities. Congress, however, has not taken away the power of Native governments to pass ordinances against minor offenses like nuisance, trespass, traffic, disorderly behavior, etc. Congress also specifically gave Native governments authority to regulate alcohol.

Congress also granted the state authority over these minor offenses, so that in Alaska both the state and Native governments have the power to define and prohibit minor offenses. Finally, Congress did not take away the regulatory authority of Native governments like planning, platting, zoning, utility regulations and licensing and it did not give the State of Alaska any regulatory authority except over the ANCSA corporations. As a result, Native governments retain exclusive regulatory authority while the state does not.

2) Does the ordinance affect only a Native community?

The second factor is that Native governments' ordinances only have effect in "Indian country." "Indian country" has been defined as reservations, allotments and dependent Native communities. While there is only one reservation in Alaska (Metlakatla in southeast), there are many Native allotments. Of more importance in Alaska, Native villages are "dependent Native communities" where the majority of residents are Native and the village was recognized by Congress as a Native village (for example, in ANCSA). Therefore, if a Native village falls into any one of these categories, it can pass ordinances within the community.

3) Does the ordinance apply to Natives and non-Natives?

Thirdly, it is clear that Native governments have authority over Natives. Authority over non-Natives is less clear. About the only thing that can be clearly stated is that Native ordinances governing alcohol, taxes, and village property apply to non-Natives while village ordinances governing traffic do not govern non-Natives. It has not yet been determined what other types of ordinances apply to non-Natives.

4) How does the Council enforce its ordinances?

There are two ways that Native governments enforce their ordinances. On one hand, the council can set up a court or act itself as a court to enforce ordinances against members.

In this case, the village is subject to the Indian Bill of Rights (25 U.S.C. 1301-1303). The village can impose a punishment up to $500 or six months in jail. If a council does this, it must enforce the punishment itself. Additionally, this law requires that the village follow certain procedures. For example, the council must normally issue a warrant to search a defendant's house. A council cannot try a person twice for the same violation. A council cannot charge someone for a violation which took place before the ordinance was passed. A council cannot make a defendant testify against himself, or prevent him from using his own witnesses.

In many states, the State courts will help enforce a tribal council's sentences if they comply with all the above requirements, but Alaska has not decided this question yet.

On the other hand, the council can use a state court _if_ the ordinance is not punished by a fine over $300, a jail sentence, or the loss of a license. If the above conditions are met, then the ordinance is called a "civil" ordinance and, under federal statute, is enforceable in an Alaskan State court. By using the State court to enforce "civil" ordinances, a village council can probably enforce its ordinances against nonmembers.

LANDS

The IRA council authorized councils to put land in trust upon petition to the Secretary of the Interior. Such lands are exempt from taxation and cannot be lost through court actions. Current BIA policy is that the Secretary cannot accept land into trust because of the ANCSA. ANCSA, however, did not repeal any portion of the IRA so that village trust land is still legally possible in Alaska.

The IRA also authorized the Secretary to declare reservations, and this authority also remains intact.

Under Section 104 of the Indian Self-Determination Act, an IRA council (or traditional council or village corporation where there is no council) has the right to request grants for "strengthening tribal government." In Alaska, these grants have been available every year and money is set aside for each village on the basis of population. The village councils can apply for them individually or as a group. Grants are often used for things like purchasing office supplies and equipment, building or renovating community meeting halls, or hiring and training personnel such as paraplanners or village managers.

Federal agencies, such as HUD (Dept. of Housing and Urban Development) and HEW (Dept. of Health, Education and Welare), which have programs providing assistance for Alaskan Native villages, will accept applications from IRA or traditional councils. Some examples of these are housing and "block grant" projects.

IRA or traditional councils are eligible to receive certain state grants such as R.D.A. (Rural Development Administration) grants from the Department of Community and Regional Affairs. However, if the village has a second class city government, then the grant would go to the city council.

Revenue Sharing

All Alaskan Native villages are eligible to receive FEDERAL revenue sharing money. Currently, an IRA or traditional council can receive the money where no second class city exists.

Under new state legislation, all Native villages are now eligible to receive STATE revenue sharing money. Where first or second class cities exist, the IRA or traditional council will not receive the state revenue sharing money.

Membership

Native villages have a great deal of freedom as far as defining the membership of an IRA. Membership may be confined to persons with some percentage of Native blood or may be designed to recognize selected non-Natives as part of the membership. This matter is up to the village. If a village sues the federal government and receives money as settlement, the federal authorities decide the definition of a Native.

Here is an example of a liberal IRA constitutional membership definition:

Section 2. Qualifications for Membership. Any person enrolled on the basic membership roll shall be a member of this organization provided he or she meets either of the following qualifications:

a) A person shall be of at least one quarter (¼) Alaskan Native descent; and

   i) born or raised in the community of ___________, Alaska, or
   ii) have established a permanent domicile for a period of at least one (1) year or more; or

b) a person recognized as a member by the _______________ IRA Council.

If the village wishes to use the IRA as a tax shelter for the A.N.C.S.A. corporation or if the village plans to otherwise transfer property between the A.N.C.S.A. corporation and the IRA, it is best to include all corporate shareholders in the IRA rolls. This will make such transfers easier since the shareholders will also have an interest in the IRA.

If some shareholders are left out of the IRA, they may sue the corporation to stop such transfers.

The Council and Officers

The number of people on the IRA council will be determined in the constitution, bylaws, or ordinance of government. There should be an odd number of officers and council members (5, 7, or 9) so there won't be ties. Staggered terms of two (2) years are common also. Officers are usually called the First Chief, Second Chief and Secretary/Treasurer or President, Vice President, Secretary/Treasurer. The other people on the council will usually be called council members.

The village can use either the Constitution, Bylaws, or an Ordinance of government to decide how vacancies on the IRA council are filled; how officers or council members can be removed from office; and what the duties of the officers on an IRA council are, are all things which are outlined in the constitutions, bylaws, or left to the council to decide in the form of an ordinance of government.

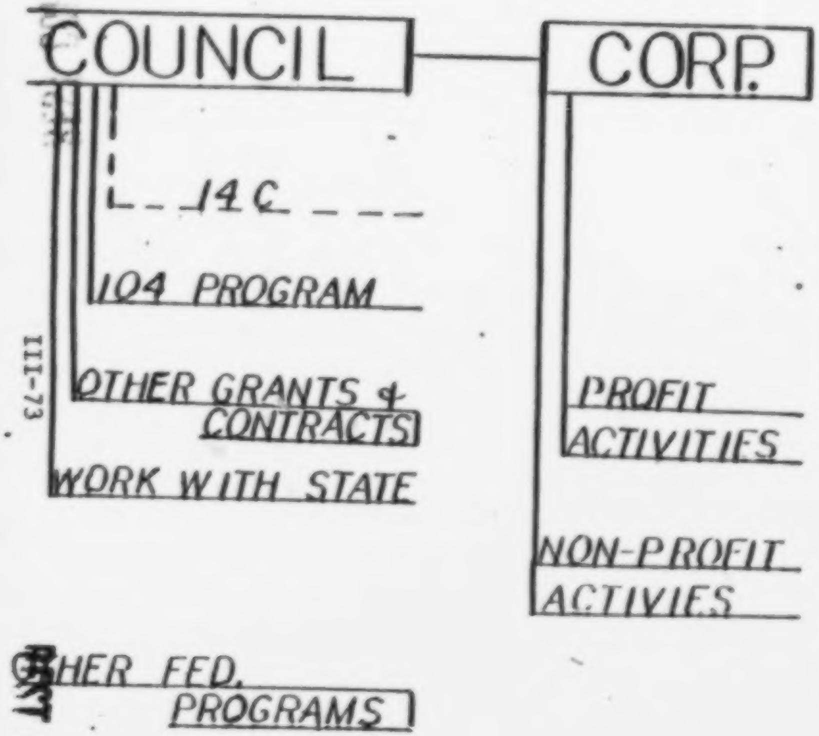
Bylaws and Ordinances of Government

Bylaws set in more detail than the constitution the activities of the council, including how membership and council meetings are run and what the duties of the council's officers will be.

If the IRA does not have bylaws or when additional rules and guidelines are needed, an IRA council can pass an ordinance of government. An ordinance of government can be passed by a majority of council's vote with or without the general membership consent. Any ordinances passed, however, cannot violate the IRA constitution or the Indian Civil Rights Act, or any other laws applicable to the village.

The biggest difference between the bylaws and Ordinances of Government is that the Secretary of the Interior must approve of bylaw changes, while the council alone can change Ordinances of Government.

BASIC I.R.A. STRUCTURE


COUNCIL
CORP.
14 C
104 PROGRAM
OTHER GRANTS & CONTRACTS
WORK WITH STATE
OTHER FED. PROGRAMS
PROFIT ACTIVITIES
NON-PROFIT ACTIVIES

By "reorganizing" under the Act, the present council will be transformed into either an IRA council, an IRA corporation or both. The same group may run both, or different groups could run each. This is up to the village to decide.

THE COUNCIL

Under ANCSA, the village corporation must turn over at least 1280 acres to the state municipal land trustee (14c) where no city exists. The trustee administers this land and relies upon the local "recognized entity" to direct his actions. Either the traditional council or the IRA council should be the recognized village entity. When some action is proposed concerning the land, the trustee will consult with the council to get its views. The council, whether IRA or traditional, will administer the 104 grant program and represent the village before federal and state agencies.

THE CORPORATION

IRA corporations are strange in that they can act as both profit and/or nonprofit corporations, This really depends on the situation and what the village wants the corporation to do.

PRESENT VILLAGE COUNCIL
AND
POSSIBLE I.R.A. COUNCIL

I.R.A. COUNCIL ↔	TRADITIONAL
RECOGNIZED	RECOGNITION IN QUESTION
DECREASED COUNCIL LIABILITY	COUNCIL LIABILITY IN QUESTION
TRUST STATUS AVAILABLE	TRUST STATUS NOT AVAILABLE

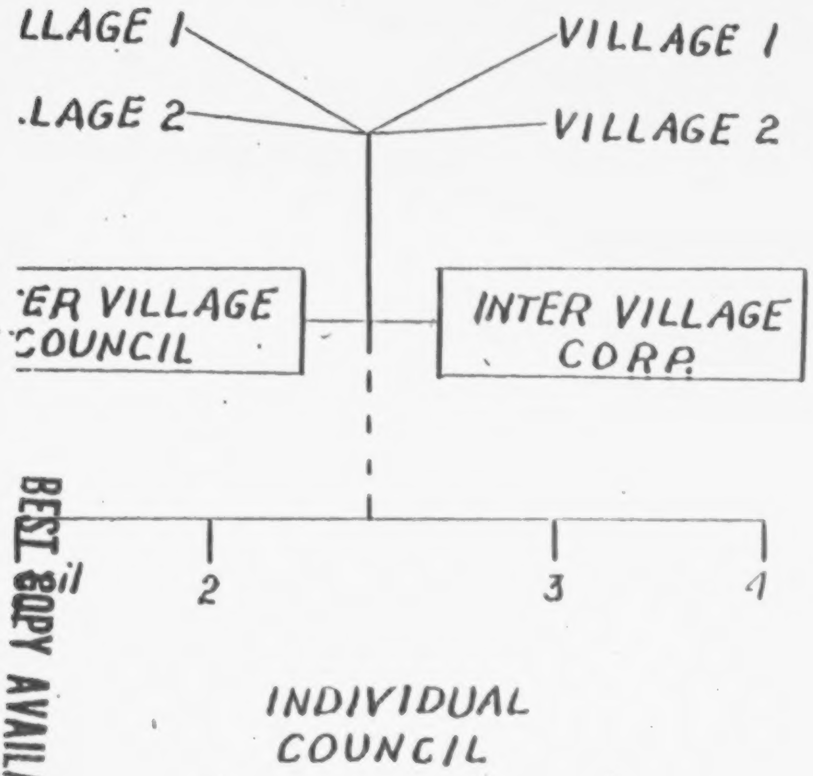
COMPARING THE IRA AND TRADITIONAL COUNCILS

RECOGNITION: The BIA and other state and federal agencies provide program funding only through *recognized* governments. BIA recognized villages and recognized governments. If a village is IRA, this recognition cannot be terminated except by Act of Congress. (For example, where Native governments are eligible for federal revenue sharing. As an IRA, the village governments are automatically eligible where no city exists). As a traditional council, the council must show that it performs "substantial government services."

FUTURE ELIGIBILITY: It is possible that in the future, IRA status may be more helpful in qualifying village governments for federal programs.

TRUST STATUS: Congress must authorize the receipt in trust of Native lands. It is unlikely that Congress will give any trust authorization in Alaska after ANCSA. However, the IRA specifically gives authority in Alaska for an IRA.

EGIONAL INTEGRATED I.R.A.


LLAGE 1
.LAGE 2
VILLAGE 1
VILLAGE 2
ER VILLAGE COUNCIL
INTER VILLAGE CORP.
il
2
3
4
INDIVIDUAL COUNCIL

IRA's are normally formed on the village level since, in Alaska, each village is considered to be a "tribe". This allows each village to retain maximum control over its own affairs.

Another option is that IRA's can also be formed on a regional level by banding two or more villages together.. An example is shown here. The villages each keep their own village council and create an inter-village council/corporation to deal with outside agencies and coordinate activities. The duties of each council can be spelled out in the constitution as the villages wish.

LESSON 8: Land Banks—Alaska National Interests Lands Conservation Act (ANILCA) Amends ANCSA

Time: One class period.

Objectives:

1. The students will learn that recent federal legislation offers them another way to protect their Native lands.

2. The students will understand some of the benefits and limitations of land banks.

Procedures:

1. Explain to the students that ANILCA has made some changes in ANCSA. The amendment we are going to study explains one way in which Native corporations and people can protect their land.

2. Have the students read a key section from ANILCA explaining land banks "Alaska Land Bank, Section 907" and complete the Student Activity sheet.

3. Read the article, "Shively Explains 1992 Amendments" Tundra Times, December 3, 1980.

4. Have students list out benefits and shortcomings of land banks.

5. For additional material, write to Legislative Affairs Office in Dillingham, requesting ANILCA.

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ALASKA LAND BANK

43 USC 1636.

SEC. 907. (a) ESTABLISHMENT: AGREEMENTS.—(1) In order to enhance the quantity and quality of Alaska's renewable resources and to facilitate the coordinated management and protection of Federal, State, and Native and other private lands, there is hereby established the Alaska Land Bank Program. Any private landowner is authorized as provided in this section to enter into a written agreement with the Secretary if his lands adjoin, or his use of such lands would directly affect, Federal land, Federal and State land, or State land if the State is not participating in the program. Any private landowner described in subsection (c)(2) whose lands do not adjoin, or whose use of such lands would not directly affect either Federal or State lands also is entitled to enter into an agreement with the Secretary. Any private landowner whose lands adjoin, or whose use of such lands would directly affect, only State, or State and private lands, is authorized as provided in this section to enter into an agreement with the State of Alaska if the State is participating in the program. If the Secretary is the contracting party with the private landowner, he shall afford the State an opportunity to participate in negotiations and become a party to the agreement. An agreement may include all or part of the lands of any private landowner: *Provided*, That lands not owned by landowners described in subsection (c)(2) shall not be included in the agreement unless the Secretary, or the State, determines that the purposes of the program will be promoted by their inclusion.

(2) If a private landowner consents to the inclusion in an agreement of the stipulations provided in subsections (b)(1), (b)(2), (b)(4), (b)(5), and (b)(7), and if such owner does not insist on any additional terms which are unacceptable to the Secretary or the State, as appropriate, the owner shall be entitled to enter into an agreement pursuant to this section. If an agreement is not executed within one hundred and twenty days of the date on which a private landowner communicates in writing his consent to the stipulations referred to in the preceding sentence, the appropriate Secretary or State agency head shall execute an agreement. Upon such execution, the private owner shall receive the benefits provided in subsection (c) hereof.

(3) No agreement under this section shall be construed as affecting any land, or any right or interest in land, of any owner not a party to such agreement.

(b) TERMS OF AGREEMENT.—Each agreement referred to in subsection (a) shall have an initial term of ten years, with provisions, if any, for renewal for additional periods of five years. Such agreement shall contain the following terms:

43 USC 1613.

(1) The landowner shall not alienate, transfer, assign, mortgage, or pledge the lands subject to the agreement except as provided in section 14(c) of the Alaska Native Claims Settlement Act, or permit development or improvement on such lands except as provided in the agreement. For the purposes of this section only, each agreement entered into with a landowner described in

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subsection (c)(2) shall constitute a restriction against alienation imposed by the United States upon the lands subject to the agreement.

Land management.

(2) Lands subject to the agreement shall be managed by the owner in a manner compatible with the management plan, if any, for the adjoining Federal or State lands, and with the requirements of this subsection. If lands subject to the agreement do not adjoin either Federal or State lands, they shall be managed in a manner compatible with the management plan, if any, of Federal or State lands which would be directly affected by the use of such private lands. If no such plan has been adopted, or if the use of such private lands would not directly affect either Federal or State lands, the owner shall manage such lands in accordance with the provisions in paragraph (1) of this subsection. Except as provided in (3) of this subsection, nothing in this section or the management plan of any Federal or State agency shall be construed to require a private landowner to grant public access on or across his lands.

(3) If the surface landowner so consents, such lands may be made available for local or other recreational use: *Provided*, That the refusal of a private landowner to permit the uses referred to in this subsection shall not be grounds for the refusal of the Secretary or the State to enter into an agreement with the landowner under this section.

(4) Appropriate Federal and/or State agency heads shall have reasonable access to such privately owned land for purposes relating to the administration of the adjoining Federal or State lands, and to carry out their obligations under the agreement.

(5) Reasonable access to such land by officers of the State shall be permitted for purposes of conserving fish and wildlife.

(6) Those services or other consideration which the appropriate Secretary or the State shall provide to the owner pursuant to subsection (c)(1) shall be set forth.

Program withdrawal.

(7) All or part of the lands subject to the agreement may be withdrawn from the Alaska land bank program not earlier than ninety days after the landowner—

(A) submits written notice thereof to the other parties which are signatory to the agreement; and

(B) pays all Federal, State and local property taxes and assessments which, during the particular term then in effect, would have been incurred except for the agreement, together with interest on such taxes and assessments in an amount to be determined at the highest rate of interest charged with respect to delinquent property taxes by the Federal, State or local taxing authority, if any.

(8) The agreement may contain such additional terms, which are consistent with the provisions of this section, as seem desirable to the parties entering into the agreement: *Provided*, That the refusal of the landowner to agree to any additional terms shall not be grounds for the refusal of the Secretary or the State to enter into an agreement with the landowner under this section.

(c) BENEFITS TO PRIVATE LANDOWNERS.—So long as the landowner is in compliance with the agreement, he shall, as to lands encompassed by the agreement, be entitled to the benefits set forth below:

(1) In addition to any requirement of applicable law, the appropriate Secretary is authorized to provide technical and other assistance with respect to fire control, trespass control,

resource and land use planning, the management of fish and wildlife, and the protection, maintenance, and enhancement of any special values of the land subject to the agreement, all with or without reimbursement as agreed upon by the parties.

43 USC 1601 note.

(2) As to Native Corporations and all other persons or groups that have received or will receive lands or interests therein pursuant to the Alaska Native Claims Settlement Act or sections 901 and 902 of this title, immunity from—

(A) adverse possession;

Ante, p. 2434.

(B) real property taxes and assessments by the United States, the State, or any political subdivision of the State: *Provided*, That such immunity shall cease if the lands involved are leased or developed, as such terms are used in section 21(d) of the Alaska Native Claims Settlement Act;

Publication in Federal Register.

(C) judgment in any action at law or equity to recover sums owed or penalties incurred by any Native Corporation or Native Group or any officer, director, or stockholder of any such Corporation or Group. On or before January 31 of each year beginning the fourth year after the date of enactment of this Act, the Secretary shall publish in the Federal Register and in at least three newspapers of general circulation in the State the percentage of conveyed land entitlement which each Native Corporation or Group has elected to include in the Alaska Land Bank Program as of the end of the preceding year.

(3) If the State enacts laws of general applicability which are consistent with this section and which offer any or all of the benefits provided in subsection (c)(2) hereof, as to private landowners who enter into an agreement referred to in subsection (a) to which agreement the State is a party, such laws, unless and until repealed, shall supersede the relevant subparagraph of subsection (c)(2) and shall govern the grant of the benefit so provided: *Provided*, That the enactment of such State laws shall not be construed as repealing, modifying, or otherwise affecting the applicability of the immunity from Federal real property taxes and assessments provided in subsection (c)(2)(B) or the immunity from judgments in any Federal action at law or equity provided in subsections (c)(2)(C).

(4)(A) Except as provided in subsection (c)(2), nothing in this section shall be construed as affecting the civil or criminal jurisdiction of the State of Alaska.

(B) Privately owned lands included in the Alaska Land Bank Program shall be subject to condemnation for public purposes in accordance with the provisions of this Act and other applicable law.

43 USC 1601 note.

(d) INTERIM GRANT OF BENEFITS.—Notwithstanding any other provision of this section, unless the landowner decides otherwise, the benefits specified in subsection (c)(2) shall apply to lands conveyed pursuant to the Alaska Native Claims Settlement Act, or sections 901 and 902 of this title for a period of three years from the date of conveyance or the date of enactment of this Act, whichever is later: *Provided*, That this subsection shall not apply to any lands which on the date of enactment of this Act are the subject of a mortgage, pledge or other encumbrance.

43 USC 1620.

(e) REVENUE-SHARING, FIRE PROTECTION, ETC.—The provisions of section 21(e) of the Alaska Native Claims Settlement Act shall apply to all lands which are subject to an agreement under this section so long as the parties to the agreement are in compliance therewith.

(f) EXISTING CONTRACTS.—Nothing in this section shall be construed as impairing, or otherwise affecting in any manner, any contract or other obligation which was entered into prior to the enactment of this Act or which (1) applies to any land which is subject to an agreement, and (2) was entered into before the agreement becomes effective.

Tundra Times
Vol. 17, No. 48,
pp. 2 & 12
December 3, 1980

Shively explains 1992 Amendments

An Unsacred Trust: a series of articles about threats to Native Ownership of land in Alaska, based on speeches and discussions recorded at the 1980, AFN convention by Paula Schiller. Schiller produces "Chinook" a statewide radio program on Native affairs.

Part Three: Three Steps Forward, One Step Back

John Shively picked up the theme of land planning and management where Gilliland left off. He said the regional and local advisory boards are "going to development of a strong subsistence program. People living in the rural areas are going to have to participate on those boards when there are elections and people are going to have to show up for hearings. It's absolutely critical."

No less critical, is an understanding of what 1992 may bring when, in Shively's words, two disastrous things can happen. Undeveloped Native land becomes taxable and stock can be bought and sold. Some of the bad things don't have to occur, thanks to what Shively calls the 1992 Amendments.

Historically, Shively said, when Indian tribes have gone out from under trust land status, undeveloped land is taxed and they have to sell it to pay the government. Under ANCSA, undeveloped land is not taxed until 1992, twenty years from the day the act took effect. Recognizing the fact that most corporations haven't received their land yet, Shively said there is a provision which makes the tax exempt period twenty years from actual land conveyance. That stretches the tax protection, but more important, says Shively, is the amendment establishing the Alaska land bank.

The land bank allows Native corporations and others to put land they don't want to develop away for safe and tax-free keeping. The land is entered first, for a ten year period and then it can be renewed in five year intervals. As long as the land is in the bank and isn't developed, it is immune from taxation, from bankruptcy unless pledged, and it is protected from people moving in and claiming squatter's rights. It should be especially useful for village corporations which don't have the resources to develop their land. However, there is a slight catch.

Getting land into the bank comes only after the corporation comes to an agreement with the neighboring land-owners on how the area in question is going to be managed. Generally, the neighbor will be the state or federal government and Shively expects that cooperative agreements will be readily forthcoming from either.

The other potential danger in 1992 is stock alienation and outside take-over of Native corporations. The way some people tell it, come 1992, Natives are going to be desperate to sell their shares for ready cash and big companies and crafty individuals are making plans to snap up all they can get. In a conversation after the panel discussion, Shively said; "At times, when I've talked to major bankers from places like New York City and mention that we're trying to do something to protect the stock from alienation and outside take-over, they were very enthusiastic. Clearly, it's something that has crossed people's minds." He and a number of Native leaders he knows, consider it a very real danger.

The protection in the d-2 bill is in an amendment that does two things:

(continued from page 2)

it allows Native corporations to amend their articles of incorporation to provide the right of first refusal to the corporation or to the shareholder's family. That means, if a shareholder wants to sell, the corporation or family has the option of buying it before it goes to an outsider. By having to take the stock to the corporation first, shareholders can learn exactly what the stock is worth and then can have time to think about the deal.

While the right of first refusal helps protect the individual, it doesn't totally protect the corporation, for none of them could afford to outbid a big company like Exxon, or a small country like Saudi Arabia. So there is another provision which allows corporations to amend their articles to say that only Natives or their direct descendants can vote the stock. That way, Exxon can buy the stock and receive dividends, but it cannot vote for the board of directors.

That's the good news about 1992; the bad news is that these amendments are not automatic Shively said that NANA would have preferred them that way, but another regional corporation wanted the amendments to be optional, and that's the way it is.

Each village and regional corporation interested in the protection offered by the 1992 amendments is going to have to round-up the support of over fifty per cent of the stockholders in order to amend the articles of incorporation. Even in the NANA region where the board has already started working along those lines, getting fifty per cent of the shareholders vote - let alone vote the same way, is something of a feat. Corporations have about eleven years to get their elections in order.

There are dozens of other amendments designed to help shareholders, corporations and Natives in general and many will take hard work to implement. As Shively told convention listeners, "there is an awful lot in the d-2 bill for Alaska Natives." He said, "We have, in many ways, re-written the claims act." ANSCA is about 32 pages long, the amendments passed in the d-2 bill add up to more than 250 pages; there are more amendments than act. According to Shively, if you're a pessimist, you look at the problems you had with 32 pages and wonder how many more you'll have with 250. Shively toiled long and hard in Washington, D.C. to make sure the amendments were in all the various versions of d-2, so naturally, he is hopeful about them. He says they're an opportunity, if people are willing to do the work needed to take advantage of them.

The word "if", is the one to pay attention to. In some ways how, the battle is coming down to a personal level. In 1992, there are some hard choices to be made as Natives feel the financial need to sell their stock and the more valuable it is, the more somebody will want to buy it.

In what he admits is a controversial statement for Non-Native to make, Shively said, "the stock, really, is sort of like being Native; it's what being Native is all about in the state. That's what the settlement is about; that's what people have after literally thousands of years living on this land - and to sell it is like selling your birthright."

Immediately, Shively counters that statement with the fact that, "many of the people who own stock are very poor and they need some economic support." He hopes the corporations can provide some king economic mix to ease the pressure on shareholders, but he expects that "people are going to have to make some very difficult individual decisions and if they look only at themselves - what's best for them; then they'll sell. If they look at what's best for Natives as a whole, I think by and large, they'll try to hang onto their stock." The amendments can make hanging on a little easier.

STUDENT ACTIVITY: LIST OUT COST AND BENEFITS OF LAND BANKS

Students - Note that land banks are another possible way of protecting Native land. After you have listed out the benefits and shortcomings, evaluate, that is determine if there is a good way for your corporation to go.

LAND BANKS

BENEFITS	SHORTCOMINGS

Are land banks a good idea for your corporation?

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LESSON 9: Student Resolutions

Time: One or two class periods.

Objectives:

1. The students will write out their own resolutions on 1991.
2. The students will write out questions they want answered regarding any of the issues pertaining to 1991.

Procedures:

1. Explain to the class that they are near the end of this unit and they should now have a foundation from which they can express their own ideas.
2. Have individuals or small groups work on writing up their 1991 resolutions.
3. Assist the individuals or groups as they formulate their resolutions.
4. Neatly list and display the students' resolutions.
5. Use the AFN resolutions from the Tundra Times special supplement found in Lesson 1 to assist the students, as well as the videotape "Tools for Tomorrow: 1991 Work In Progress." This videotape addresses the issues of 1991. The options are discussed and the eight draft AFN resolutions are discussed.
6. Remind the students that, if time permits, they will study what other Native peoples in different countries have accomplished in their land claims settlements.

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STUDENT ACTIVITY: 1991 RESOLUTIONS - WHAT IS IMPORTANT TO YOU?

READ - You have had an opportunity to study much material on 1991. It is now time for you to prepare your own resolutions. Get a big piece of butcher paper and divide it up into the various issues you have studied, such as newborns and stock alienation, and carefully write out your resolutions.

In the next unit, you will have a chance to add to this list by studying what Native people in other countries have achieved in their land claims settlements. Ask for help, this is difficult and important work you are doing!

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LESSON 10: The Berger Recommendations

Time: Four or five class periods.

Objectives:

1. Students will review the relationship between village corporation and land ownership.
2. Students will be introduced to the recommendations of the "Berger Report."
3. Students will become aware of the specific "land ownership through tribal government" proposal by Berger.

Teacher Notes:

The recommendations put forward by Berger in Village Journey have only just recently reached the publication stage and few critical analyses or follow-up materials yet exist. However, Berger's controversial ideas seem to have recast the entire format of the ANCSA discussions—from one focusing on an economically oriented version of land ownership via corporations, toward one emphasizing a political orientation using tribal governments instead. Berger is also pushing strongly for added Native control of subsistence patterns using these Native governmental structures. He is advocating complete Native control within those areas where Natives own the land, and joint management where Natives share the resources with others (such as along migratory routes). Hence, interesting curricular territory not ordinarily explored now assumes added significance. Areas that call out for further examination might include: the differences in history and legal standing between certain minority groups (the indigenous Eskimo and Aleut as compared with the German, Irish, Vietnamese, or Black); clarification of the concepts of Native sovereignty and self-government; or the varieties of rural governments in general (whether tribal or state-chartered). Additional materials on these topics are available upon request from the Bristol Bay Curriculum Project. They are:

1. "Modern Alaska Native Governments and Organizations" (Chapter 9) and "Sovereignty: The Alaska Native Claim to Self-Government" (Chapter 10), in Alaska Natives and American Laws, by David S. Case. Fairbanks, University of Alaska Press, 1984.
2. "Forms of Local Government" (Chapter 10), in Alaska's Urban and Rural Governments, by Thomas A. Morehouse, Gerald A. McBeath and Linda Leask, Boston: University Press of America, 1984.
3. "Sovereignty, Sovereignty, Sovereignty," by Ted Chamberlain. Alaska Native News, November 1984, pp. 24-28.

Procedures:

1. Have the students read text.

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2. (Optional) Watch the videotape "Bearing Witness" (30 min.). This video, if used, should be shown first since it provides background information, and is the less technical than the audiotape "The People, The Land, and The Law." Also, it shows last year's Youth Conference with Berger interviewing a few students. This may be of interest to your students.

3. Listen to the audiotape "The People, The Land, and The Law" (30 min.). Spend two class periods on this tape. The tape can be stopped after the narrator states: "land - turned over to the tribe..." (just before tribal governments are discussed at length). Students will need to discuss the issues brought out by the first part of the tape. The next day have the students listen to the rest of the tape and answer the questions on the listening guide.

4. (Optional) Read either the complete chapter, "Recommendations" (Chapter Seven) in Village Journey, by Thomas R. Berger, New York: Hill & Wang, 1985; or just read pages 166-172 from this same chapter. (The reading is difficult).

5. Make arrangements to visit the Traditional Village Council and have the student prepare a list of questions for discussion (see Student Activity Sheet). These questions should explore the issues raised by Berger, as well as provide a "reality check" to his recommendations.

6. Make arrangements to visit the Village Corporation, or have them visit the school. Follow the same format as above.

(A one page xerox of the history and aims established for the Alaska Native Review Commission has also been included for teacher background use. This comes from the "Summary Report on the OVERVIEW ROUNDTABLE DISCUSSIONS OF THE ALASKA NATIVE REVIEW COMMISSION," Anchorage: February 27 - March 16, 1984, p. 1).

THE ALASKA NATIVE REVIEW COMMISSION

In July 1983, in Frobisher Bay, NWT, the 3rd Inuit Circumpolar Conference (ICC) established the Alaska Native Review Commission (ANRC) and appointed Thomas R. Berger to serve as commissioner. The World Council of Indigenous Peoples (WCIP) has agreed to co-sponsor the commission, which is directed by its terms of reference to examine and report on:

1. the socio-economic status of Alaska Natives;
2. the history and intent of the Alaska Native Claims Settlement Act (ANCSA) passed in 1971;
3. the policies and practices the Government of the United States has used in the past to settle Native American claims thereby placing ANCSA in a political perspective;
4. how the Native corporations have tried to carry out the spirit and intent of ANCSA for Alaska Natives; and
5. the social, cultural, economic, political, and environmental significance of ANCSA to indigenous peoples around the world.

ANRC's terms of reference are broad because it is expected to make recommendations to protect and promote Native culture and Native communities not only in Alaska but also in other nations that have indigenous minorities. ANRC's work, spread over a two-year period, will conclude with a report to be made public in September 1985.

From: "Summary Report on the Overview Roundtable Discussions Of The Alaska Native Review Commission," Anchorage: February 27 - March 16, 1985, p. 1.

Text:

Some quick review:

You have been struggling hard for some time now trying to understand the intentions behind and probable effects of ANCSA. You probably remember that the ownership and control of the Native ancestral lands has been tied directly to corporation activities, as one result of ANCSA.

However, these lands can still be forever lost to non-Native individuals and groups if the corporation cannot protect the lands. You have talked and read about examples like bankruptcies and hostile takeovers--two ways in which the corporations might lose their lands.

What can be done? Again, you have formed your own resolutions for making changes and then have compared those ideas to the best ones that a statewide Native organization, (AFN), has developed to date. (Putting certain land into the Land Bank and restricting the sale of stock to non-Natives are two examples).

Even so, many Native people across the state are still very afraid that even these actions would not protect the lands well enough. This is one of the major findings of the Alaska Native Review Commission (ANRC), directed by Thomas Berger. The final report of the Commission, Village Journey (written by Berger) has offered an alternative set of recommendations for protecting the lands.

These recommendations, given in a full chapter from Village Journey, focus upon "...the main concerns of Alaska Natives...[which] are land, self-government, and subsistence." One very strong and controversial recommendation offered in Village Journey has been that Native lands should be owned and controlled by tribal governments instead of the village corporations.

The new recommendations state:

LAND: "I [Berger] recommend that the shareholders of village corporations who are concerned that their lands may be lost should transfer their land to tribal governments to keep the land in Native ownership."

SELF-GOVERNMENT: "Tribal governments established in all of Alaska's Native villages should assert their Native sovereignty."

SUBSISTENCE: "I recommend that tribal governments should have exclusive jurisdiction over fish and wildlife on Native lands... ."

Clearly, Berger is emphasizing the necessity of tribal government for its own sake and for the sake of both continued Native land ownership and continued Native subsistence activities. Village Journey, Berger's report expands the discussion on ANCSA to include political, cultural, and social issues. Berger is seeking a way to address both economic issues (highlighted by the profit-making corporations) and political issues (highlighted by sovereignty).

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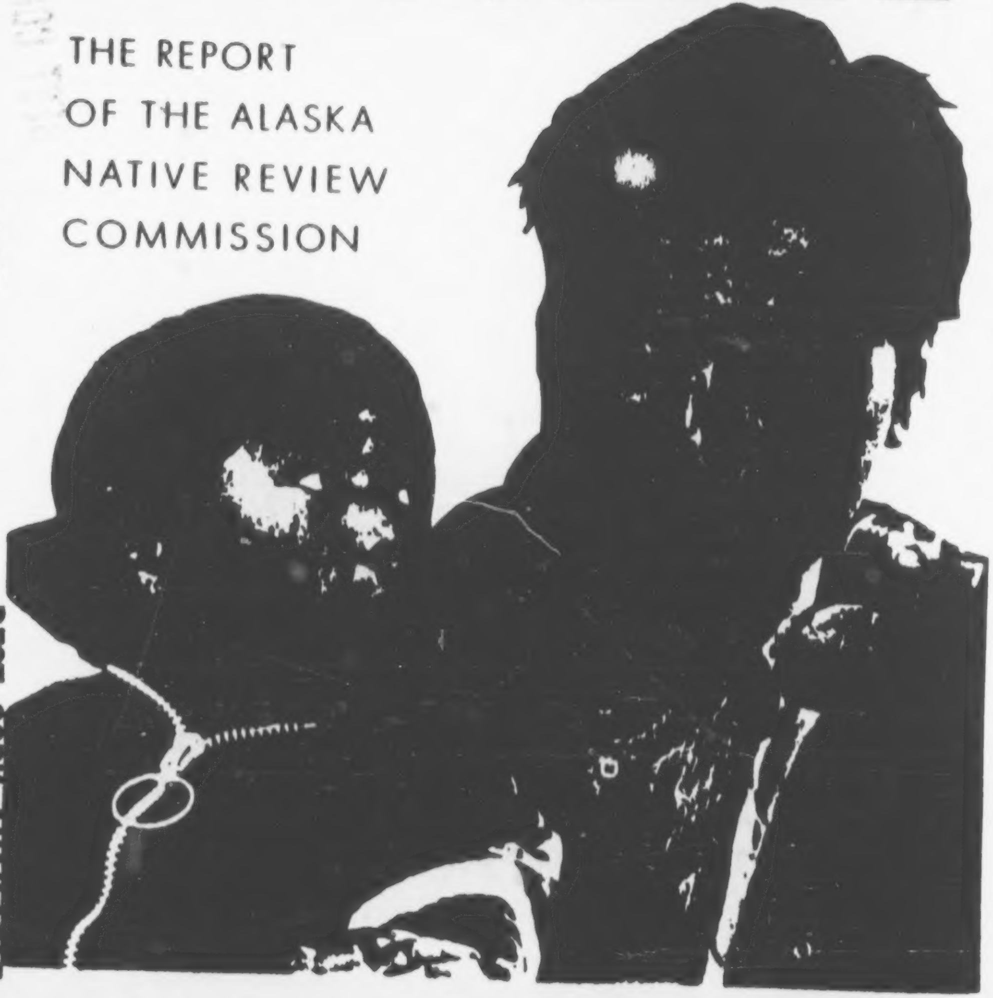
You are part of a very exciting time in which political organizations need to address cultural, subsistence, and social concerns of Native people not adequately addressed by ANCSA. Each village and corporation in Alaska will be discussing and acting on these concerns. Join in!

VILLAGE JOURNEY

THE REPORT
OF THE ALASKA
NATIVE REVIEW
COMMISSION



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Seven /

RECOMMENDATIONS

> We are the only ones who can save ourselves. We keep looking to the outside world for someone to come and do it, and it is not going to happen. We are expecting someone out there to save us and, in fact, there is nothing in the outside world that is really that important. . . . I think our people ought to understand that it is possible to maintain their identity and their spirit and their language and their traditions and their history and their values and still function in the twenty-first century. We know what we need to know, how to make decisions, how to analyze situations, how to speak many languages and understand technology. *(Edgar Ningeulook, Shishmaref)*

Tununak and Fairbanks have very different Native communities. In one, the great majority is Native people who still live off the land; in the other, Natives are a minority within a large urban population. To the people of Tununak, subsistence and self-government are the paramount issues; to the Native community within Fairbanks, these concerns are less pronounced. Both of them, however, share a common concern to keep Native land in Native ownership.

The concepts articulated by John Marshall offer an answer to the dilemma ANCSA has presented to village Alaska: distinctive institutions of self-government and distinctive modes of land tenure. This is what distinguishes Native Americans in law from other minorities. The egalitarian measures used to address the just demands of ethnic minorities are inadequate for Native Americans.

The Distinctiveness of Native Americans

The United States takes pride in being a natural home for peoples of any religion or race, any language or culture. Immigrants in their millions have come to the United States. As individuals, as families, they chose America and its institutional arrangements. Native Americans are not a minority in the same sense. They did not choose America. They were here first, with their own societies, laws, and institutions, and they wish to remain distinct. But immigrant minorities have consciously worked to integrate themselves in the great melting pot of American society.

Black Americans were brought to the United States as slaves. But, separated by an ocean from their ancestral lands, they have no legal claim to a land base or jurisdiction of their own in America. Their goal, during the past century, has been equality of opportunity, equality as individuals. Their struggle, seen on television, is central to present-day urban life in America. Many Americans rallied to the Black civil-rights movement during the 1960s because they could see that Black Americans wanted the same rights as other Americans. Their struggle serves as an example for other minorities in the United States who demand equal access to political institutions and economic opportunities. It is vital to understand, however, that the goals of Black Americans are different in many ways from the goals of Native Americans.

The struggle of Native peoples takes place far from the consciousness of most Americans, on rural reservations glimpsed from the highway, or, in Alaska, in villages on the edge of the Arctic Ocean, where few White Americans have been—off camera, so to speak. There are no marches down the main streets. The desire of Native Americans to remain distinct political communities has frustrated those who have attempted to lead them along the road Black Americans have taken.

Many Americans believe that to claim rights for tribes or classes, groups or collectivities, runs against the American individualist tradition. They consider that the protection of individual rights is the most effective way to secure such interests. Legal and constitutional means to protect these rights for minorities in the United States are expressed in laws to prevent discrimination on the basis of race, nationality, or color, and in laws to protect the free exercise of religion. Although Native Americans from time to time claim the benefit of these laws, their central concerns do not fall within these categories.

Native rights rest on a fundamentally different footing from the claims of Black Americans and immigrant minorities. Their attempts to preserve, on their own terms and for their own purposes, a land-based culture and way of life mark Native

Americans off from other minorities. No other minority can assert a right to a land base and to distinct political institutions founded on the recognition of Native sovereignty.

President Reagan, in a policy statement issued in January 1983, reiterated the sovereignty of tribal governments. Yet, in Juneau and even in Washington, D.C., a tendency to deny the legitimacy of Native sovereignty in Alaska continues. How could the expression "sovereignty" be used in a carefully constructed policy statement related to Native Americans and not apply to those in Alaska? It is neither logically consistent nor morally defensible to deny to Alaska Natives the rights held by other Native Americans. Some persons say that Alaska Natives are unlike American Indians: their goals are different and they wish to integrate. That is not what Alaska Natives have been telling me. Their goals are fundamentally the same as those of American Indians as well as those of related peoples throughout the Canadian and Greenland Arctic and sub-Arctic and indigenous peoples the world over. In the preamble to the Indian Self-Determination and Education Assistance Act, 1975, Congress declared that "the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons." It seems unlikely that Alaska Natives have surrendered what Indians of the Lower 48 have fought to preserve.

Is America willing to acknowledge the persistence of Native culture and Native values in Alaska, the legitimacy of distinct modes of Native landholding and Native governance as essential expressions of Native culture and values? Does America's cultural pluralism extend to all of its indigenous peoples? These questions underlie the riddles of ANCSA, and they will not go away. The stand that Alaskans and other Americans adopt will be based on their own deepest convictions about their nation.

These issues are not partisan. Both the Republican and the Democratic parties, from Franklin Roosevelt to Ronald Reagan, have espoused the cause of Native Americans. Conservatives have an interest in conserving indigenous institutions that have worked for centuries. Liberals should understand that to undermine Native institutions is to undermine their cultural identity and, in that way, to erode Native individual identity.

Retribalization of Land

In general, the Native persons who testified at the hearings I held throughout Alaska want to sever Native lands from the ANCSA corporations; many of them want to retribalize their lands by transferring them to tribal governments. In this desire, they perceive an answer that is logical not only in their eyes, but also in the eyes of the law. If the corporations keep the land, it will not remain in Native hands. Alaska Natives require a form of landholding that reflects their own cultural imperatives and ensures that ancestral lands will remain in their possession, under their own governance. The road to the retribalization of Native land is plain, its implications clear; this way, there is a legal path, not a legal thicket.

All that I have written in preceding chapters reveals the chaos that will result if shares in the village corporations are to be sold. To accept that as if it were simply a case of exercising personal choice in an ordinary matter of private law is to use the vocabulary of corporate law to obscure the cultural consequences that would ensue in the villages. Native people may accept private-law instruments for disposing of units of wealth, but this willingness does not eradicate their continuing attachment to the land. It may be something that White culture expects of them; it doesn't nullify the deeper impulse of Native culture. If there is to be a right to sell shares, it must be only to sell shares in a village corporation that has divested itself of its ancestral lands by conveying them to a tribal government. Surprisingly, many urban Natives urged this idea: the theme struck by many was "Keep the land in Native ownership, but let me sell my shares." In this way, the land would stay in Native hands, even though shareholders would still have the right "to get out of the system."

Under Alaska state law, shareholders who object to the transfer of ANCSA land to a tribal government would have the right to be bought out at market value. Congress has the power under the Commerce Clause to authorize retribalization of ANCSA land without regard to the rights of dissenting shareholders under Alaska state law. In 1973, Congress restored the Menominees' tribal government and extinguished the right of dissenting shareholders to be bought out. It has already exercised this power in Alaska in the 1976 legislation authorizing mergers of ANCSA corporations without regard to dissenters' rights. It will have to exercise it again to enable the villages to retain their land.

It should be understood, however, that if village corporation land is transferred to tribal governments, the economic development of the land may in the future be harder to arrange than if the land were still under corporate ownership. This is, in a sense, the very object of the transfer. Nevertheless, there may be tracts of land that, in years to come, villages will want to improve or to develop. Obtaining capital or credit may not then be a straightforward business transaction, as it is for a corporation. A waiver of sovereign immunity with respect to the land to be developed might be required. This is not to say that tribal governments cannot develop land. Many in the Lower 48 do. Others operate businesses—indeed, the tribal government at Metlakatla operates a cannery.

Self-Government

A corporation cannot take from the rich and give to the poor without facing a shareholders' suit; but a tribal government can implement measures designed to achieve social justice. A corporation can claim no immunity to state laws—it is a creature of state laws—but a tribal government can assert immunity from them. A profit-making corporation is comprised of stockholders who own shares; but a tribal government is comprised of members identified by who they are, not what they own. A corporation's existence depends upon statements of its profit and loss, but a tribe's existence is endlessly renewed with each generation. All of these are reasons why Alaska Natives have told me they want tribal governments.

But even if corporations are rejected as the primary means for holding Native lands, why should tribal governments be preferred to state-chartered local governments as the expression of Native political interests? The issue of public government, as against Native government, arose at virtually all the hearings.

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At Barrow, many persons pointed out the advantages that a home-rule borough had brought to the Inupiat Eskimos who live there. These advantages derive from two main reasons: the Inupiat form the majority in the North Slope Borough and they have a tax base, revenue from the production of oil at Prudhoe Bay.

The North Slope Borough may be regarded as the first beachhead of Eskimo home rule in the Arctic. There have been others since then. In 1975, the Inuit (Eskimos) of northern Quebec established a regional government, Kativik, where they constitute ninety percent of the population. In 1978, the Inuit of Greenland, who constitute eighty percent of the population, established a home-rule government.

The Eskimos of the North Slope Borough, northern Quebec, and Greenland chose public government as a means of achieving Eskimo home rule because they constitute a majority of the population. They will probably continue to do so because they live in some of the world's least habitable regions. Otherwise, I believe, they would have chosen a form of Native government. Indeed, in northern Quebec, the Cree, who settled their claim at the same time as the Inuit, opted for a tribal form of government because they are a minority in their region.

In the North Slope Borough, the question of an appropriate vehicle for holding ANCSA land is important: after the land becomes taxable during the 1990s, the borough (whether or not its government eventually falls into non-Native hands) may be obliged to levy a property tax on all taxable real estate within its boundaries on a non-discriminatory basis. Together, the regional corporation and the village corporations on the North Slope own approximately 5.5 million acres. Ronald Brower, vice-president in charge of land for the village corporation in Barrow, referring to the possibility that ANCSA lands might have to be taxed by the borough, said: "After 1991, you might as well turn over all [Native] lands to the borough."

At this point in Alaska, Native sovereignty has clear advantages over public government, even where Natives constitute a majority. Whatever else may be said about public governments, they do not own the Native land. If tribal governments on the North Slope owned ANCSA village land, the land would be

immune from taxation by the North Slope Borough. In some cases, there is no reason why tribal and public governments should not exist side by side, just as, in Wisconsin, the Menominee retained their state-chartered county government even after their tribal government was restored.

Notwithstanding these uses of state institutions, the Native peoples of Alaska clearly want their own tribal governments. The political character of these governments is an aspect of the peoples' identity, just as languages and cultures are. Their own political institutions are essential to their tribal character, without which they are no more than a collection of some seventy thousand individuals of various races and languages, a minority like any other, with no claim to land nor to distinct institutional arrangements. But, in fact, they are tribes. If they were not tribes, if they were nothing more than Natives scattered around Alaska, if their political organization did not define who they are, then their position really would be indistinguishable from that of any immigrant minority. As such, they are entitled to claim the right—and assume the burdens—of governing themselves. As Osage-Otoe attorney Browning Pipestem told the commission:

> Being a government is a problem. It's not fun being a government. It's a serious undertaking. . . . If you are [a tribal government], then it seems to me that you need to exercise your authority. If you are not, then you need to forget about it. . . . The . . . growth of tribal government has come . . . as the Indian people have better understood the nature of the authority that they have exercised.

Alaska Natives must be ready to assume responsibility as sovereign peoples, and Congress must fully acknowledge that, in Alaska as in the Lower 48, Native governments are legitimate political institutions, and that they have a right to retain ancestral lands in perpetuity. The blend of institutional arrangements is not likely to be the same in Alaska as it is for Indians in the Lower 48. Such an affirmation would nevertheless be wholly consistent with the principles of federalism that undergird the American political system.

Subsistence: Native Jurisdiction over Fish and Wildlife

Native governments are also essential if Native peoples are to defend subsistence. The State of Alaska is unable to defend Native subsistence, municipalities will not do it, and the corporations cannot do it.

Native peoples already have the exclusive right to take fish and wildlife resources on Native-owned lands and water, subject to state jurisdiction. This means that although they are the only ones who can fish, hunt, trap, and gather on the ten percent of Alaska that they own, the state tells them when, what, and how much they can harvest. They want the right to manage these resources themselves. I think they should have exclusive jurisdiction over fish and wildlife on ANCSA lands. There, they should manage the resources themselves.

Tribal members, by virtue of tribal membership, would have the exclusive right to fish and wildlife on Native lands and waters. The tribal government could, of course, extend these rights to urban Natives and others. Since Native governments would own these lands, exclusive rights and jurisdiction seem altogether appropriate, but these lands comprise only ten percent of the state and are inadequate for Native subsistence. Native people must have guaranteed access to their other fishing, hunting, trapping, and gathering areas on state and federal lands. Also, in partnership with state and federal authorities, they should share jurisdiction over fish and wildlife in those areas. There are distinct advantages for the state in such an arrangement. As Spud Williams, president of Tanana Chiefs, said:

> The state needs us as much as we need them to manage fish and game resources. They've got to be willing to recognize tribal governments for effective management in rural Alaska. They cannot police this country. The only police force out there that can do it are the people, and we are probably more strict than the state in watching our food because . . . it's not fish and game, it's food. We are not going to let somebody destroy our table, so we have to maintain those authorities and those functions. The state is too large for the state to do it. The state can't even take care of Anchorage and Fairbanks and Juneau and the major communities, let alone take care of rural Alaska. They don't have the resources to do it, they don't have the manpower. They can't do it. They need the cooperation of the people to do it. And they have to cooperate with us, and then we will cooperate with them—it's that simple. It's going to take a partnership or they are going to destroy our state.

Simply put, the members of Alaska Native tribes ought to have exclusive hunting and fishing rights and jurisdiction over Native lands and waters, and shared rights and jurisdiction over state and federal lands and waters. There are precedents that have been successful elsewhere.

Treaty fishing rights in the state of Washington are among the notable examples. In *Passenger Fishing Vessel Owners Association v. Washington*, the U.S. Supreme Court had to consider several treaties made in 1855 that entitle members of the signatory tribes to fish off their reservations at their "usual and accustomed grounds and stations in common with the citizens of the territory." The court held that this language meant the signatory tribes were entitled to the opportunity to take up to fifty percent of the harvestable catch (after spawning escapement) within waters covered by the treaties, nearly all the salmon-fishing waters in Washington. To exercise these rights, tribal fishermen need not buy state fishing licenses, and they are also entitled to fish from their traditional fishing stations, whether located on private or publicly owned lands.

Tribal fishing rights have also been applied to species that, unlike salmon, can be caught only in the ocean. In 1984, the Makah Indians of western Washington obtained federal recognition of tribal rights to harvest fish at "their usual and accustomed" fishing grounds off the Washington coast under this same series of treaties. The courts have also upheld the jurisdiction of the western Washington tribes to regulate the fishing rights of their own members on and off the reservation, free from state control, as long as the tribes have their own courts, laws, and law-enforcement systems.

The affirmation of these treaty rights has revitalized the Native economies and societies in western Washington. Moreover, the twenty-two tribes have established research and enhancement programs that have benefited all users of the fishery. The tribes participate with state and federal authorities in a management plan that applies to all waters affected by the treaties. Similar management regimes for both hunting and fishing are possible and desirable in Alaska and have been recently implemented in Canadian settlements with Native peoples of the Arctic and sub-Arctic.

Under the James Bay Agreement of 1975, the Cree and Inuit of northern Quebec received land in fee simple (the Inuit received two million acres, the Cree about one million acres), and the exclusive right to hunt, fish, and trap on an additional thirty-eight million acres. Because there are only about ten thousand Cree and Inuit, these rights are significant. Even beyond these lands, the Natives have the exclusive right to hunt, fish, and trap certain species of fish and wildlife. The Inuit also exercise jurisdiction over these activities according to their own customs and laws. Harvest levels, quotas, and wildlife management are largely their responsibility.

Under the Western Arctic Claim of 1984, the Inuvialuit have exclusive rights to wildlife on their own lands and preferential rights to all wildlife in the whole of the western Arctic region. They also have exclusive rights to bear and musk-ox in the region. All of these rights are subject to laws of general application for safety and conservation. The point is that, in these recent settlements, the right of Native people to take wildlife is not confined to the lands to which they received title under the settlement, but in order to protect their way of life—their culture—it includes areas within the public domain that they have always used.

Native jurisdiction over subsistence activities carries with it a responsibility for their management. Native government can undertake the direct management of fish and wildlife resources, providing local control over their resources by the people who have the greatest interest in their preservation. Through regulations or practices that reflect local considerations, Native governments can effectively improve the protection of wildlife habitat and reduce the cost of wildlife management in remote areas of Alaska. It will, as Oscar Kawagley said at the hearing in

Bethel, "take the natural talents our people have and put them to work in the sciences."

> I think the people are certainly excellent land managers. They can certainly take care of the game, the land, and they have proved that by doing it over the last—who knows how long?—forever, I suppose, and . . . our people's knowledge isn't really being utilized to its fullest. *(Wayne Attla, Hughes)*

> I also feel that Fish and Game shouldn't put regulations for the people. I feel that our people could do a better job than some college graduate that comes here to put regulations on us. I also feel that all the regulations could be made by the Native people that live on the land, and could be much better off than that which is written from Washington, D.C., or Juneau. Those laws we don't get along with. I am sure if we were to write our own laws, we would be much more happier. *(Louis Commack, Ambler)*

Because most Native lands are bounded by immense tracts of federal and state land, cooperative planning to manage and protect the interests of all parties will be necessary and desirable. For example, the values and standards of national parks could be maintained on Native lands, and the values and standards of Native subsistence could, at the same time, be maintained on park lands. To realize this goal, tribal governments should be able to contract with state and federal agencies to conduct scientific studies and management activities that are required for migratory species.

Under the Indian Reorganization Act, tribes have the authority to negotiate agreements with the state and federal governments. Under the Lacey Act, which applies to Alaska, federal fish and wildlife enforcement agencies are authorized to contract with tribes and their members to use their services and their facilities to jointly enforce federal laws prohibiting the interstate transport of fish and wildlife taken in violation of tribal law. There is no reason why the state cannot contract with tribal governments to regulate fish and wildlife; it is simply a matter of passing a statute to authorize state agencies to do so. Many states with Native populations already have such laws.

We have seen how Congress has, in the past, restored tribal rights after periods of experimentation with other regimes. In ANCSA, aboriginal rights to hunt and fish were extinguished. In ANILCA, the cultural entitlement of Native people in Alaska to fish and wildlife resources was recognized and partially restored. Now the time has come to fully implement that finding by restoring tribal rights to fish and wildlife resources.

Recommendations

In making recommendations, there is a danger of entanglement in the web of issues that ANCSA presents: shares, dissenters' rights, the land bank, children born after 1971—the list could go on—but the main concerns of Alaska Natives, and therefore of this book, are land, self-government, and subsistence. These concerns are linked: taken together, they are the means by which the Native people seek to regain control over their land, their communities, and their lives. Dealing with them offers at the same time an opportunity to make recommendations regarding the future of the Native corporations.

I am not recommending the transfer of any additional lands from the public domain to Native ownership. What concerns me here is the fate of the forty-four million acres to be conveyed to Native ownership by ANCSA. It is likely that the Native peoples of Haines, Seward, Wrangell, Petersburg, and Ketchikan, all of whom were excluded from ANCSA and received no lands, will submit claims that may have to be addressed. The special-purpose lands allocated under ANCSA may be sufficient to provide lands for these communities.

I am recommending that Congress reexamine some issues related to compensation. The complexity of the legislation resulted in the dissipation of a great deal of the financial compensation in legal action; delays in conveying land caused losses in earnings; and high inflation during the payout phase reduced the total monetary settlement by nearly a third. Congress could establish a fund to pay the debts of Native corporations whose lands are in jeopardy. The Treasury could be reimbursed from future revenues, including revenues under Section 7(j) of

ANCSA. Even so, money is not the solution. The persons who spoke at the hearings were chiefly concerned about the land, self-government, and subsistence, and it is right, I think, to concentrate on these subjects.

Recommendations: Land

Since the land is now a corporate asset, the scope of possible recommendations is limited. It is not possible simply to urge that a law should be passed transferring the land from Native corporations to tribal governments. The land is, under the law, private property belonging to the corporations. My recommendations are, therefore, addressed to the Native shareholders in the corporations. Given congressional action, it will be possible for the Native people to unscramble the omelet.

I recommend that the shareholders of village corporations who are concerned that their land may be lost should transfer their land to tribal governments to keep the land in Native ownership. The matter is one of urgency in the villages, and it should be done at once. The tribal government would hold this land in fee simple, although some tribes may wish to place their land in trust with the federal government. In either case, the tribal government would be able to claim sovereign immunity with respect to the land. Congress should pass legislation to facilitate the transfer of land by the village corporations to tribal governments without regard for dissenters' rights. Where village corporations have merged, the lands formerly held by each village corporation should be transferred by the merged corporation to the appropriate tribal governments.

Tribal governments would exercise all of the functions of the corporations with respect to any further village-land selections and conveyances. Land should be turned over to tribal governments on condition that they admit to membership all of the original shareholders in the village corporation. Tribal governments have the power to determine their own membership, and Natives born after 1971 should be members of a tribe. This arrangement accommodates the children born after 1971; they should be included in the tribe by virtue of their being born into it.

Congress should enact legislation to clarify the village tribal governments' right to exercise a veto power over all subsurface development on village-owned ANCSA lands. Village corporations presently have such a right under Section 14(f) of ANCSA, but it is not clear that this right extends to all village corporation lands.

I recommend that the lands required by Section 14(c)(3) of ANCSA to be conveyed to state-chartered local governments or to the state in trust should be transferred to the tribal government. Any land already conveyed for this purpose should be reconveyed by the local government or the state to a tribal government. Unoccupied federal townsite lands in unincorporated communities or in communities that dissolve their municipalities should also be conveyed to the tribal governments. Unless those entitled were to waive their entitlements to fee land, the tribal government would be required to make the other conveyances under ANCSA Section 14(c) to protect the interests of residents and local businesses. The airport reconveyances required under Section 14(c)(4) should go to the tribal governments.

Recommendations: Village Corporations

Because my recommendations relate only to the land, they would leave the village corporations and the merged corporations with all their other business assets. If a village corporation has a thriving business or investments, nothing I have said would impair the corporation's right to continue to carry on its business, to make a profit, and to pay dividends to shareholders. In most cases, however, it seems likely that, without their land, the village corporations will be dissolved.

If a village corporation is already engaged in profitable activities based on land development, the land, after it is transferred to the tribal government, can be leased back to the corporation for business purposes. The tribal government would also have the option of chartering a tribal corporation to take over the operations of the village corporation.

If the village dissolves its corporation and transfers all of its assets to the tribal government, the tribal government should receive revenues otherwise due the village corporation under ANCSA Section 7(j).

Recommendations: Regional Corporations

I have concerned myself principally with the future of the villages, a concern that entails specific recommendations regarding the land that belongs to the village corporations. The regional corporations own the subsurface of the village lands and sixteen million acres of other land, much of which is checkerboarded with village lands. The regional corporations together have the right to select approximately one million acres of special-purpose lands, but they are of less importance to the villages. It is the village subsurface lands held by the regional corporations and the sixteen million acres adjacent to the village lands that are of concern to Native subsistence interests. If the regional corporation loses its lands, Native subsistence users would no longer have access to them; moreover, the new owner could use the lands in ways destructive to village interests.

Regional corporations should consider transferring the subsurface of village lands to the respective village tribal governments. If it were deemed advisable to keep the subsurface in some type of regional organization to continue the interlocking arrangement between regions and villages that Congress had in mind, an alternative would be to transfer the subsurface to a regional tribal government. If such an institution did not already exist, then the affected region would have to establish one, and this might require congressional action.

Regional corporations should also consider at least three options with respect to the sixteen million acres of wholly owned regional-corporation lands adjacent to the villages. First, they should consider transferring these lands to the villages to ensure unified village control of the greatest possible acreage. Second, the regional corporations should consider transferring these lands to regional tribal governments, perhaps in conjunction with the transfer of village corporation lands to village tribal governments, if it seemed important to maintain both village and regional land-owning institutions. Finally, the regional corporations should consider assigning subsistence easements to village or regional tribal governments. Regional corporations would then continue to own the lands, but use of the lands would be restricted to subsistence purposes. New owners of regional lands would have to honor the easement. Such easements would be similar to conservation easements, now familiar in the Lower 48, but might require amendments to state and federal law to ensure that regional corporations granting the easements would receive the same tax advantages afforded grantors of conservation easements.

None of these options appears to be exclusive of each other; they could be used singly or in combination, depending on the wishes of regional and village corporation shareholders. It should also be noted that these options could be implemented in a region where the village and regional corporations are merged. In such a region, all the shareholders participate in only one corporation, which owns all the interests in all the lands, so it would be easier then to decide which lands should be transferred to village ownership and which lands, if any, should be retained in regional control.

The establishment of regional tribal organizations, recognized as such under federal law, would also provide the regional corporations with the option of assigning non-real estate assets with a view to securing the advantages of tribal immunity. The regional tribalization of lands should also be considered from the standpoint of the at-large shareholders for whom the loss of these lands may be especially significant.

Recommendations: Self-Government

Tribal governments established in all of Alaska's Native villages should assert their Native sovereignty.

Pending and future applications by villages in Alaska for tribal constitutions and charters under the Indian Reorganization Act should be granted. The state should recognize tribal governments as appropriate local governments for all purposes under state law. These measures, important for Native self-rule, may entail the dissolution of some, but not all, of the state-chartered local governments in Native villages.

I do not recommend the general establishment of Native reservations in Alaska. Instead, tribal governments would hold the land in fee simple. But if there are villages that want their land taken in federal trust, this should be done.

I urge that all land subject to the jurisdiction of Native governments should be described as Indian Country or, as the case may be, Eskimo Country or Aleut Country. This phrase would accurately describe the situation, and it would release everyone from a vocabulary that now confines the discussion of alternatives.

Recommendations: Subsistence

I recommend that tribal governments should have exclusive jurisdiction over fish and wildlife on Native lands, whether owned by Native corporations or by tribal governments. On federal and state lands (ninety percent of Alaska's land area), Native governments in partnership with state and federal governments should exercise jurisdiction on all hunting, trapping, and gathering lands used by tribal members. On all Native lands, the Native peoples would have the exclusive right, as tribal members, to subsistence, subject to exclusive tribal jurisdiction.

Exclusive Native rights, although appropriate for Native-owned lands and waters, are not appropriate for state and federal lands and waters in Alaska, because Native peoples do not own these areas and their claims to them have been extinguished. A different regime is required here, one that would fully protect the Native peoples' interests. Rights of access on state and federal lands and waters and a share of the resources fully sufficient for Native subsistence must be guaranteed. Shared jurisdiction with the state and federal governments should be exercised so that Native hunting and fishing rights are not regulated except for conservation purposes. Native authorities should impose and enforce regulations before federal or state authorities intervene. The James Bay and Northern Quebec

Agreement is perhaps the best model. The federal Marine Mammal Protection Act is an American example of a legal regime which intervenes in Native subsistence only when necessary.

The health and abundance of fish and wildlife depend on the quality of the environment throughout their range. Many species will migrate beyond Native-owned lands or lands used for Native subsistence within the state and federal domain. To ensure a continuing supply of subsistence resources for Alaska Natives, Congress must clearly establish a policy of protection for migratory species and provide for Native participation in the overseeing of that protection.

STUDENT ACTIVITY: TRADITIONAL COUNCIL (or I.R.A. council)

From your studying of Berger's recommendations, it is clear that he sees the Traditional Council playing an important part in the future. What does the council think about this prospect? Do they think that Berger's recommendations will work in your village? Does the council believe the village and regional corporations are the best way to proceed into the future? Let's find out.

We suggest that your teacher and class visit the Traditional Council or have them visit your class. We have prepared a few questions for you. You should make your own list of questions...use ours only if you find them helpful.

1. What is a traditional council?

2. What does it do?

3. Where does it get its authority?

(List your questions.)

4.

5.

6.

Last, ask the council if there are questions or issues that they would like you to "answer." At the Youth Conference, there will be knowledgeable people working with you on these issues. Bring these questions to the Youth Conference.

STUDENT ACTIVITY: VILLAGE CORPORATIONS

To obtain a more complete understanding of Berger's recommendations it is necessary for you to talk to your village corporation. They may very well have a different view of Berger's recommendations than the Tribal Council. It is important for you to understand their position. Your class should set up a meeting with members of your Village Corporation and ask them to talk to your class about Berger's recommendations.

We suggest that you develop your own list of questions and submit them to the Village Corporation before the meeting. Also, let the Village Corporation know that you are studying these issues. Ask them if they would want your class to study a particular issue. Bring these concerns to the Youth Conference.

QUESTIONS:

1.

2.

3.

4.

5.

UNIT IV: INTERNATIONAL PERSPECTIVE

OBJECTIVES:

1. The students will become aware that many of the issues facing them are being addressed by Native organizations and Native peoples around the world.
2. The students will analyze and compare various land claims settlements with the Alaska Native Claims Settlement Act.
3. The students will apply lessons learned from other Native groups and their settlements to the previously developed class resolutions.

LESSONS:

1. Introduction to Global Native Issues.
2. A Case Study.
3. Learning from the Experience of Others.

MATERIALS LIST: Note: Items in brackets refer to either resources available in your school or resources that must be requested in advance.

Lesson 1 - "Inuit from Three Nations Seek Political Influence." Fairbanks Daily News Miner.

[Classroom Arctic or Circumpolar map]

[Videotape:* "Rope to Our Roots," (30. min.)]

Lesson 2 - "Sovereignty: A matter of guns or birth," by Bill Hess, Tundra Times.

"Native Settlements and Native Rights," by J.S. Frideres, The Canadian Journal of Native Studies, 1981, pp 59-85.

"Canadian Inuit Land Claims and Economic Development, part 1 and 2," by Richard G. Condon. Alaska Native News, Oct/Nov 1983.

"Land Claims and Political Development," by Shepard Krech II. Cultural Survival, Inc.

Dene Nation Newsletter, Jan/Feb 1982.

"COPE Wins Massive Land Settlement." The Arctic Policy Review, July-August 1984, pp. 5-10.

"Lessons of Self-Government and Development," by Peter Jull. Northern Perspectives, 1979.

"Greenland Can Serve as Model to Alaska Natives, Says Premier." Anchorage Daily News, December 10, 1983.

"Native Rights in Another Land." Northern Perspectives, 1980.

"Native Rights in Norway." Northern Perspectives, 1981.

*A copy of the videotapes may be obtained by writing

College of Human and Rural Development
Resource Center
505 Gruening Building
University of Alaska-Fairbanks
Fairbanks, Alaska 99775

A blank VHS tape must accompany each request. Whenever possible, more than one program will be dubbed onto a tape.

Teacher's Notes: The following lessons may be done in a variety of ways, although we will state specific lessons and procedures. We would like to encourage you to do this entire unit as an inquiry/problem-solving exercise. The students can view the entire set of material on the International Perspective as a valuable resource which might offer them new insights or suggestions on how to respond to the issues of 1991. In fact, the material in this unit can broaden the scope of the debate simply because of the varied experience of Native people from many different places coping with similiar issues.

To run this unit as an inquiry/problem-solving unit, you can organize the material into categories such as sovereignty, land claims settlements, and environmental impacts. The students can read through the material, view the films, and state:

1. major problems facing Native peoples in the North
2. the most important factors contributing to these problems
3. possible solutions

Then:

—evaluate these solutions and rank-order them

—choose the best solution

STUDENTS

You may be surprised to learn that Native peoples all across the North are facing similar issues involving land, subsistence, and development. Aboriginal people in Australia, New Zealand, South America, and other places are also facing critical decisions regarding the future of their lands. You will learn that Native peoples in Canada, Greenland, Scandinavia, the Soviet Union, Australia, and South America have many common concerns. In this unit you will also learn that other people facing similar issues may have different solutions. These solutions may apply to you. Let's find out.

LESSON 1: Introduction to Global Native Issues

Time: One to two class periods.

Objectives:

1. The students will be able to identify and state common environmental and subsistence issues faced by Native peoples across the Arctic.
2. The students will become aware of the Inuit Circumpolar Conference (ICC) and the role that it plays in Native issues.
3. The students will state why an international organization such as ICC is valuable.

Procedure:

1. Have the students read the newspaper article from the Fairbanks Daily News-Miner entitled, "Inuit from three nations seek political influence."
2. Have a map of the Arctic or a Circumpolar map posted and review with the students the various circumpolar nations that have an indigenous population.
3. Show the videotape, "Rope to our Roots," (30 min.). This videotape provides a visual examination of the Inuit community of the circumpolar regions. Highlights of the 2nd ICC Conference held in 1980 in Greenland are interspersed with a synopsis of various Native problems originating from the reality of Native peoples living within nation states, i.e., civil rights, economic subsistence, land claims, etc.
4. Have the students take notes on the common issues facing Native people in the Arctic. Note these issues on a large piece of butcher paper and place it where everyone can see. Star those issues or problems that most relate to Bristol Bay.
5. Discuss these commonalities and draw out the relationship of these issues to those that are occurring in Bristol Bay.

Follow-up Activity:

Have the students write to another group of Native students from Greenland, Canada, Norway, or Australia stating the concerns and issues that are facing them due to ANCSA and 1991 (see the attached list for addresses). If each class were to write to a different country we would obtain valuable information on Native issues from a global perspective.

Inuit from three nations seek political influence

By STAN JONES
Fairbanks News-Miner reporter

FROBISHER BAY, Northwest Territories — The organization that represents the free world's Eskimos, or Inuit, will celebrate its sixth birthday in this Canadian city next week.

Foremost on the agenda of the third general assembly of the Inuit Circumpolar Conference is the issue that led to its formation in 1977: How the Arctic's indigenous peoples can control, or at least influence, the development of the north's oil and minerals by the resource-hungry south. In fact, the theme of the conference is "The Arctic — Our Common Responsibility."

The Inuit Circumpolar Conference, or ICC, was started by the late Mayor Eben Hopson of the North Slope Borough, with the Inuit of Canada, Alaska and Greenland represented at the first meeting in Barrow. The second triennial gathering was held in Nuuk, Greenland, in 1980. This year, the Canadians are taking their turn as hosts, with this former World War II military base on Baffin Island at the country's eastern edge as the site.

To date, the Inuit of the Soviet Union have not been allowed to join the organization. The ICC had hoped they might be allowed to attend this year's conference, but learned at the last moment that Moscow had said 'no' again, professing concern about the possible political overtones of the conference.

The chief goal of this year's conference is formulating a policy on Arctic development. But the agenda spans the range of Arctic issues: whaling, cultural preservation, economics, transportation, communications, health and welfare and the environment.

The ICC's first three years of life were spent mostly on drafting and ratifying a charter. The group's energies have recently turned outward.

The ICC was influential in halting the Arctic Pilot Project, a plan to move natural gas from Melville Island in the Canadian Arctic to markets in the south by means of huge, ice-breaking tankers traveling through the Davis Strait between Canada and Greenland.

The Inuit fear the mammoth project would disturb sea life in the area, and disturb Natives' society without yielding them any of the benefits.

"All Inuit will in no way accept icebreaking supertankers to plow the Arctic waters carrying natural gas or oil," said ICC president Hans-Pavia Rosing when the project was stopped last summer.

In addition to the environmental and cultural worries, the Inuit were afraid the project might jeopardize the Canadian land claims movement, which has yet to be settled, as well as a parallel political proposal by Canadian Natives to divide the Northwest Territories into two provinces, with the treeline as border.

The Inuit who make up the ICC share similar language and cultures, but their political situations are as different as the countries where they make their homes.

This spring, the ICC acquired non-governmental organization status at the United Nations, which the Inuit hope will mean a louder voice in international policies that affect the Arctic.

In April of this year, the organization used the status to argue against a German proposal to classify all seals as endangered, which the Inuit saw as a threat to their own seal hunting.

The ICC has also formed the Alaska Native Review Commission to study the status of Alaska Inuit, particularly how well they have been served by the Alaska Native Claims Settlement Act.

The Inuit who make up the ICC share similar language and cultures, but their political situations are as different as the countries where they make their homes.

Greenland, whose population is about 80 percent Inuit, was a colony of Denmark until it acquired Home Rule status in 1979. That means the Greenlanders have substantial control over their domestic affairs, with Denmark still conducting foreign affairs, supplying the currency, and heavily subsidizing the economy.

In the United States, the land claims of Eskimos and other Alaska Natives were resolved 12 years ago by the Alaska Native Claims Settlement Act. The act lacked any political component, however, an omission that may account for the growing sovereignty movement in the state.

In Canada, perhaps as a result of lessons learned from Alaska, the land claims movement has proceeded parallel to the political movement to subdivide the Northwest Territories. At present, however, neither seems close to resolution.

Residents of the Northwest Territories — Inuit, Dene, and non-Natives — accepted the partition in a vote 15 months ago, but the Canadian government in Ottawa has yet to act on it.

BEST COPY AVAILABLE

NATIVE YOUTH GROUPS IN ALASKA

Rose Abraham, Coordinator
Native Youth Leadership Program
Community Education Department
Cook Inlet Native Association
670 W. Fireweed Lane
Anchorage, Alaska 99503
(907) 265-1273

Jerry Lipka or David Miller
Bristol Bay Curriculum Project
P.O. Box 10206
Dillingham, Alaska 99573
(907) 842-5901

Mr. George Irvin, Executive Vice President
Alaska Federation of Natives - Youth Council
411 W. 4th Avenue, Suite 1-A
Anchorage, Alaska 99501
(907) 274-3611

Anchorage Community College
ATTN: SOS - Alaska Native American Indian Student Organization
2533 Providence Drive
Anchorage, Alaska 99508 OR

University of Alaska, Fairbanks
c/o: Rural Student Services
ATTN: SOS
5th Floor Gruening Building
Fairbanks, Alaska 99775

Calvin Baker, Principal
Kotzebue High School
P.O. Box 264
Kotzebue, Alaska 99752
(907) 442-3341

Chevak Youth Dance Group
General Delivery
Chevak, Alaska 99563

Northern Light Dancers
c/o NANA Regional Corporation
Box 49
Kotzebue, Alaska 99752

Native Youth Olympics
Reggie Joule
c/o NANA Regional Corporation
Box 49
Kotzebue, Alaska 99752

Continued on next page

Continued...

Native Youth Groups In Alaska

Native Culture Club
Bartlett High School
25500 N. Muldoon Road
Anchorage, Alaska 99504

Native Culture Club
Chugach High School
Mile 17, Old Glenn Hwy.
Chugach, Alaska 99567

Native Culture Club
Diamond High School
2909 W. 88th Avenue
Anchorage, Alaska 99502

Native Culture Club
East High School
4025 E. 24th Avenue
Anchorage, Alaska 99508

Native Culture Club
SAVE 1 Program
5300 "A" Street
Anchorage, Alaska 99503

Native Culture Club
SAVE 2
2650 E. Northern Lights Blvd.
Anchorage, Alaska 99504

Native Culture Club
Service - Henshew High School
5577 Abbott Road
Anchorage, Alaska 99507

Native Culture Club
West High School
1700 Hillcrest Drive
Anchorage, Alaska 99503

Native Youth Groups Outside Alaska

Sorlak
Cooperation for the Sake of Youth
and Children
Box 1026
3900 Nuuk, Greenland

Groenlands Idraetsforbund
(Greenland Athletic Association)
P.O. Box 84
DK-3900 Nuuk, Greenland

Det Groenlandske Spejdrkorps
(Girl & Boy Scouts Association)
P.O. Box 243
DK-3900 Nuuk, Greenland

Sukoreq
(Assoc., of Recreation Centers)
P.O. Box 21
DK-3920 Qauortog, Greenland

Kik
(Student's Assoc. in Greenland)
P.O. Box 1026
DK-3900 Nuuk, Greenland

I.O.G.T.
(Temperance Society)
P.O. Box 60
DK-3940 Paamiut

Hvide Kors/Groenne Baand
(Temperance Society)
Prinsesse Benediktesvej 764
DK-3920 Aasiaat

The National Indian Youth Council
201 Hermosa Drive NE
Albuquerque, New Mexico 87108
(505) 266-7966

LESSON 2: A Case Study

Time: Two to three class periods.

Objectives:

1. The students will become knowledgeable about land claims in other countries and be able to state to the class major differences between "other" countries' land claims and Alaska's.

2. Each student will be able to analyze land claim settlements in one other country and note major differences.

Procedure:

1. Divide the class into small groups, depending upon your class size. Each group is to represent one country, as if they were all part of an international conference on Native land claims issues. (They should become familiar with that country, locate it on a map, and be able to state basic information pertaining to it.)

2. Each group then reads the appropriate case material provided for the following countries or situations: the Cree, the Dene, the Inuvialuit, the Saami, the Greenlanders, and the Australian Aborigines.

3. Have each group fill out their part in the "International Comparisons" chart.

4. Each group then should report to the others. Assist them in organizing their information and in making their report.

5. Choose a student to place this information in a master chart that notes each country (and Native group) and the specific ways they have handled the issues facing them.

Teacher's Notes: Case information on each of the group.

1. Cree -- "Sovereignty: A matter of guns or birth?" by Bill Hess, Tundra Times, (no date).

   "Native Settlements and Native Rights: A comparison of the Alaska Native Settlement, the James Bay Indian/Inuit Settlement, and the Western Canadian Inuit Settlement," by J.S. Frideres, The Canadian Journal of Native Studies, 1981, pp. 59-85.

   "Canadian Inuit Land Claims and Economic Development, Part I and 2," by Richard G. Condon, Alaska Native News, October and November, 1983 (information on other Inuit people included.)

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2. The Dene -- "Land Claims and Political Development: The Case of the Dene," by Shepard Krech II, Cultural Survival, Inc., a quarterly, Cambridge, MA, (no date).

   "Traditional Land Use Maps Return to the Communities," by John McCullum, Dene Nation Newsletter, January/February, 1982.

3. The Inuvialuit -- "COPE Wins Massive Land Settlement," The Arctic Policy Review, July-August, 1984, pp. 5-10.

4. "Greenland -- Lessons of Self-Government and Development," by Peter Juv, Northern Perspectives, 1979.

   "Greenland Can Serve as Model to Alaska Natives, Says Premier," Anchorage Daily News, December 10, 1983.

5. "Australia: Native Rights in Another Land," Northern Perspective, 1980.

6. Saami -- "Native Rights in Norway," Northern Perspective, 1981.

Note: Other materials are available. If any of your students are interested in doing in-depth study, please contact the Bristol Bay Curriculum Project.

For this lesson you will need to imagine that you have been invited to attend an international conference dealing with Native rights and land claims issues. In fact, the information you learn as you become a member of another group may prove to be very helpful to you as you finalize your Alaska-oriented proposals for 1991. The countries you are about to adopt have had different experiences dealing with the same or similar issues that are facing you. By reading these materials and acting as a representative from that country, you will learn some important comparative information.

It is time for you to choose your country. Your teacher will assist you in background information about these countries, such as their location, population, etc. After you have read the articles, fill out the chart below. Also, if you are interested in learning more about these countries and the issues Native people are solving, please contact use at the Bristol Bay Curriculum Project in Dillingham. We have additional materials.

INTERNATIONAL COMPARISONS

	Newborns	Profit	Stock Alienation	Political Sovereignty	Game Management
Cree					
Dene					
Inuv					
Saami					
Greenlanders					
Australian Aborigines					

Sovereignty: A matter of guns or birth?

Editor's note: Three weeks of overview hearings on the Alaska Native Claims Settlement Act of 1971 came to an end Friday afternoon in Anchorage when Judge Thomas Berger adjourned a gathering of international indigenous leaders. In next week's Tundra Times, we will take a comprehensive look at all three sets of hearings. Our coverage will include an interview with Al Star of Tanana, who at 85 years of age was the eldest participant, and the only Alaska Native to sit on the round table for the entire three weeks. We will also reveal the reaction of different Alaskans to the hearings, and the work and mission of the ANRC.

By Bill Hess
Tundra Times

To Mark Gordon, there is "the ideological sovereignty people like to talk about" and a more realistic version which is simply a matter of "who has the biggest guns."

To Shorty O'Neill, sovereign- [illegible] -ly [illegible] it is quite silly, amusing even, for White Europeans to claim sovereignty over our land," he explained last week. "We are the only sovereign people! We are born with that right!"

Gordon, an Inuit from the Canadian province of Quebec, and O'Neill, an aboriginal Australian, stated their opinions during the international week of the overview hearings of the Alaska Native Review Commission. The three weeks of overview hearings, which ended last Friday, are part of a two-year study to determine the effects of Alaska Native Claims Settlement Act of 1971 and how they feel ANCSA has or has not met those expectations.

After the hearings, he will write a report based on the testimony of what is expected to be thousands of Native Alaskans and make recommendations as to possible steps to address the problems created by the Act. The ANRC was founded by the Inuit Circumpolar Conference. The World Council of Indigenous People has since joined as a sponsor of the study.

Gordon, vice-president of the Makivik Corporation and vice-president of the Canadian delegation to the ICC, made it clear that ANCSA had served as the major model for the Inuit people of Northern Quebec as they hammered out a land claims agreement with the federal and provincial governments claiming jurisdiction over their aboriginal homeland.

Until very recently, Gordon said, his people had had little contact with those governments and had no idea of the concept of land claims. The land had simply been there for the Canadian Inuit to live, hunt, fish and raise their families on. The Western concept of private ownership of land was virtually unheard of.

Following World War II, famine and sickness struck Gordon's people hard, brought about by excessive commercial harvests of the wildlife resources they depended on for survival. The governments had to step in with aid and services just to keep the people from dying off. "We still had no perception of land claims," Gordon noted.

Then they started hearing of a great dam which would be built on a river to the south of them to make electricity for people living in cities farther to the south. Not only would 4000 square miles of land be flooded, but the flow of the river passing through their territory would be reduced.

The Inuit took the issue to court and won a short-lived victory calling for a halt to the project. A week later, Gordon noted, a higher court ruled against them, citing a "balance of inconvenience."

"If more of them would be affected adversely if the dam was not built, than of is if it were, then it would be built, regardless of who was right," Gordon explained.

Elsewhere, the Inuit also learned that an asbestos mine was going to be developed, and there were other schemes being promoted to harvest the nonrenewable resources of the region, with little thought being given to the aboriginal inhabitants.

"That's when we got into the notion of what land claims is," said Gordon, explaining that his people realized if they took no action, they would pay the heaviest price for the development in the loss of lands and subsistence resources, but would receive no benefits from the development.

Along [illegible] the Cree who lived just south of the Inuit territory, Gordon's people launched a claim against the government.

"We decided to look at Alaska," Gordon said, noting that ANCSA was in place and the regional and village corporations had been formed. "It was the only experience we could turn to."

Gordon and others visited the Arctic Slope and NANA regions, where they were warmly received, and given advice both about what to seek and what to avoid in their own settlement.

The result was a settlement which, like ANCSA, resulted in the formation of corporations for the Inuit and Cree, but with some major differences. Many Alaska Natives are greatly troubled with portions of ANCSA which allow corporation lands to be taxed after 1991, and shares and therefore lands to be sold to anyone, Native or not.

Much unhappiness has also been expressed over the ANCSA provisions which prevented children born after Dec. 18, 1971 from being shareholders in the corporations. This effectively cut these "new Natives" or "afterborns" off from any legally recognized right to the lands dominated by their ancestors for untold centuries.

Both problems have been avoided in the James Bay and Northern Quebec Agreement. Instead of "shareholder" corporations, "membership" corporations were formed. Inuit children automatically become members, and there are no shares which can be sold or willed to anyone.

Makivik, the region-wide corporation for the Inuit, does not hold the land, and the land is not tied to the financial wellbeing or failure of the corporation. Special "land holding corporations" have been created for the villages with 243 square miles being deeded to each.

There were 13 villages at the time of the act, but family groups have been moving back to the traditional homes they occupied before the government began clustering them together to make it easier to provide education and services for them.

These lands, 3,500 square miles total, cannot be bought or sold. Only the Inuit can own them; only the Inuit can hunt and fish on them. Additionally, the Inuit have preferential hunting and fishing rights throughout the 100,000 square miles of Northern Quebec which makes up their original homeland.

Management for fish and game has been turned over to the Inuit, although they cooperate with the federal and provincial governments. Instead of scientists coming up from the south to conduct biological studies, the Inuit carry out the studies themselves, with what Gordon describes as much better results.

The Inuit also are responsible for keeping track of their own take, and as a result know exactly how many polar bears, beluga whales, birds, fish, and eggs have been gathered, Gordon said. When the Canadian and provincial governments were doing the studies and setting the rules, Gordon noted that the people ignored them and in the vast and sparsely populated region, it was impossible for Canadian and provincial authorities to enforce their laws.

"The problem was . . . someone would fly in from the south, not explain what they were doing, do some research, fly south again, and surprise, surprise! Here's some regulations for you!" Gordon recalled.

When the people do the research and set policy themselves, Gordon said, they stick to whatever regulations they find are needed to protect the fish and game.

Gordon admitted that there are many problems with the agreement. Although Makivik has been consistently profitable, even if only marginally so, profits are not distributed to individual members. Government regulations set certain standards, sometimes demanding the ability to be fluent enough in English or French to pass tests. These have resulted in successful Inuit-owned business and construction enterprises being largely staffed by non-Inuit Canadians from the South.

Workers coming up from the south must also receive special subsidized benefits covering housing, food, transportation out of the area for both the worker and his family, and other costs.

A local worker with the same skills will receive the same salary, but none of the benefits. When these are added in, imported workers are earning an average of more than twice as much as the local workers.

"The result is that people who have the least ability to pay have the highest costs," Gordon said. "It's weird!"

On the other hand, Inuit control of fish and game, and a subsidy received as a provision of the agreement which pays for the taking of subsistence foods for the Elders, the sick and others unable to provide for themselves, have resulted in a strong traditional economy, Gordon said.

The situation has caused considerable resentment among the people of the villages, Gordon noted.

Under provisions of the agreement, the Inuit people have formed their own regional government, which Gordon likened to the North Slope Borough. Unlike the borough, however, this government has no real tax base to draw on and the bulk of funds come in from outside. Rules and regulations created in the South must be met even though they often have little application in the North.

Many Inuit in the area were upset because they felt that the provisions of the agreement dealing were too weak. Describing them as "dissidents," Gordon explained that they were upset that the regional government was under provincial jurisdiction and that the aboriginal rights to self-government were purportedly extinguished in the act.

They would have preferred "to go for the ideological sovereignty people like to talk about," Gordon said.

Although the James Bay-Northern Quebec Agreement is the only land claims settlement which has been finalized in Canada, the Committee for Original Peoples Entitlement has reached an agreement in principle in the Northwest Territories as has the Council of Yukon Indians (CYI) in the Yukon Territory. The Metis and Dene Nation are working on a settlement.

The concept of corporations exists somewhere in each one, as does the extinguishment of certain aboriginal rights in turn for settlement benefits. CYI is insisting on a provision which could restore all rights once Canada adopts a constitution, which is expected to cover the relationship between the government of Canada and its indigenous peoples.

O'Neill, who serves on the National Land Council in Australia, found all talk of corporations, land relinquishment, extinguishment of rights, and dissident groups to be very disturbing.

"I'm amazed that people are still ac[illegible] their l[illegible] after hearing of a provision of the proposed Yukon agreement which would allow the Natives to sell land to anyone.

O'Neill explained how the government of New Zealand had once agreed that 95 percent of the Maori peoples' homeland would be turned over to their chiefs. "What's been happening since then is they've been importing alcohol," O'Neill protested. "There's been a lot of drunk chiefs around . . . now they own three percent of the land. They've sold the other 92 percent!"

Mike Smith, a Yukon Athabascan who has been involved in the negotiating process dismissed the fear, noting that the agreement in principle had special provisions which would make it easy for the Yukon Indians to purchase more land to add to the 8,000 square miles of land they would receive under the agreement in principle.

"We're not going to be in the business of selling land," he argued. "We're going to be in the business of bu[illegible]

"I hope it works that way," an unconvinced O'Neill responded. He also was highly critical of corporations as a tool for Natives wanting to hold onto their lands and cultures.

There have been aboriginal corporations in Australia. "You end up with a couple of aborigines with a lot of money, but little land." Most of the people do not even see the money, O'Neill said.

"You get a whole lot of rich lawyers, a whole lot of rich car dealers, a whole lot of rich publicans and there's a whole lot of damn broke aborigine people!"

Some of the Canadians, such as Peter Ittinuar, an Inuit member of Parliament and an active force in the movement to divide the Northwest Territories into two governments, one which would be dominated by Native people, cautioned O'Neill about his vigorous stand on aboriginal sovereignty.

Wouldn't it be more practical, Ittinuar asked, to work for self-government under conditions acceptable to the stronger governing entities? Ittinuar noted that the very use of the word sovereignty arouses a great deal of opposition from the western populations.

"We are a sovereign people! That's it!" O'Neill replied. He likened what has happened in Australia to what would happen if he, a visitor to Anchorage, were to rob a bank,. "I'd be in jail tomorrow . . . . nobody can steal your sovereignty. It's a birthright. You're born with it!"

According to testimony delivered by O'Neill and fellow aborigines Maureen Kelly and Stanley Scrutton, the Australian government, as little as 15 years ago, was unwilling to admit to any aborigine rights. Today, the government still refuses to recognize any sovereignty, but has been yielding to many aborig- [illegible] been returned. In the Northern Terri-

(Continued on Page Nine)

Alaskans voice frustration

By Bill Hess
Tundra Times

There was little testimony from Alaska Natives during the international week of the Alaska Native Review Commission overview hearings, but what was given was packed with anger and emotion.

Sheldon Katchatag charged that the rights of village tribal governments not to have their lands taken without consent were violated by the Alaska Native Claims Settlement Act. Katchatag recommended that the tribal council, of which he is a member, declare the act null and void.

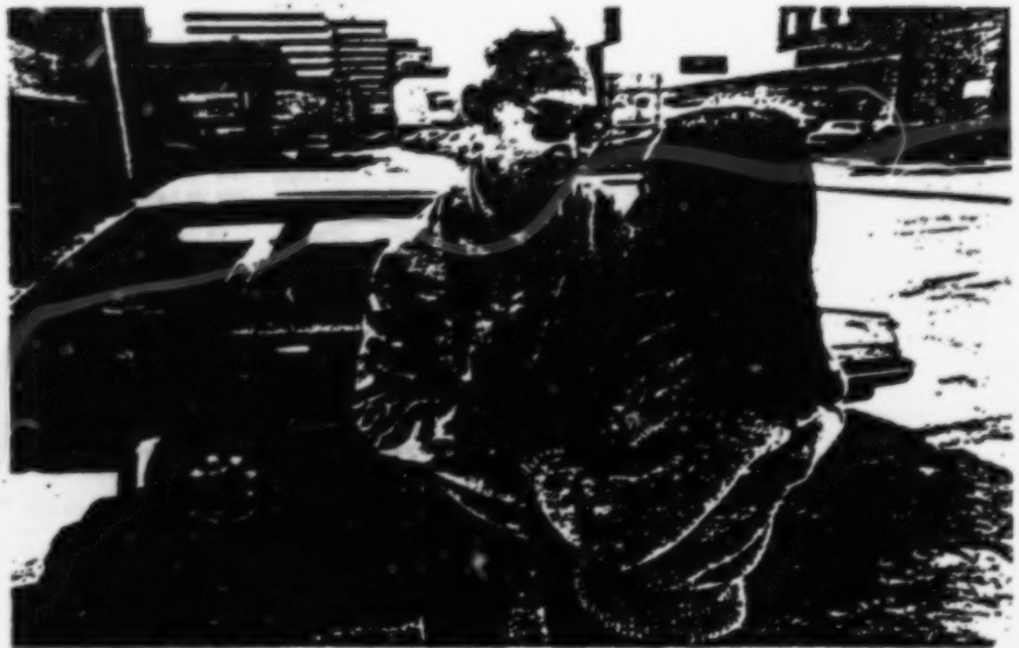
Charlie "Etok" Edwardsen, Jr., denounced ANCSA as a tool to separate Alaska Natives from their lands and heritage, and called for an "Alaska Native People Restoration Act" to be brought before the U.S. Congress.

Mike Albert gave in to tears as he asked why "the landowners" were not asked for permission before ANCSA was passed.

Katchatag, who is vice-president of the United Tribes of Alaska and a member of the Indian Reorganization Act tribal council of Unalakleet, told Judge Thomas Berger, head of the commission, that he had been studying Unalakleet's constitution.

"I came to the conclusion that ANCSA violates the sovereign rights of tribal governments to stop the giving away of tribal lands, interest in lands, rights, water rights, you name it, without the consent of the tribe," Katchatag said.

He explained that under tribal regulations recognized by the U.S. Secretary of the Interior, no tribal lands or lands which the tribe had an interest in could be taken away without the consent of the tribal government. Unalakleet's tribal government had never given its approval of ANCSA, Katchatag said.



Mike Albert of Tununak gets a little moral support from Chris Walunga-Bywater only moments after asking Judge Berger why "the real landowners" were not asked when Alaska became a state and later when ANCSA was passed. Walunga-Bywater said she had been waiting for someone to ask that question.

PHOTO BY BILL HESS

Katchatag went on to say that he would return home with the recommendation that the IRA council declare ANCSA "null and void" as far as Unalakleet was concerned. He mentioned that he had often heard ANCSA being held up as a model for indigenous people seeking settlements in other parts of the world.

"Our action will prove that ANCSA is in fact a model," Katchatag charged, "but it is a model of what not to do."

Later, Katchatag explained that he had been hearing the Elders of his community voice their concerns over ANCSA for some time, and had been looking for a "handhold" from which to launch some action.

"The protection of our lands is not properly being taken care of," Katchatag said. "The traditional lands received by the corporations under the claims settlement act are not protected. They're subject to state alienation through tax indebtedness and bankruptcy. As long as our lands remain as assets of corporations, they can be taken over.

"This is a violation of our tribal laws which have been recognized by the federal government."

Katchatag argued that ANCSA also violated the tribal governments responsibility to protect traditional lands for future generations of Natives when it excluded those born after December 18, 1971, from benefits under the act.

Katchatag called for a good faith dialogue with the government. When asked if Alaska Natives who reject the act might be expected by the government to pay back their share of the $1 billion settlement which left them with 44 million acres of land, Katchatag said that would be a subject open to negotiation.

"I don't pretend to have all the answers," he said.

Katchatag emphasized that what he was stating was his own opinion and did not represent official positions by either the tribal government or UTA. In fact, the Unalakleet IRA had not yet had a chance to get together to discuss his proposal, and Katchatag suspected some members might feel he was moving too far too fast.

"I think I'll probably have to explain myself when I get home," he said. Katchatag believes that once his village and others get a chance to study the laws and his proposal, the idea could snowball across Alaska.

Edwardsen, a lobbyist who was active in the land claims movement which led to ANCSA, charged that although Alaska Natives had hoped the government would deal with them in good faith, it had not.

Edwardsen said he became active in the movement because of a clause in the purchase agreement between the United States and Alaska that at some point in the future, the government would have to settle the claims of Alaska Natives with them.

When government and industrial leaders sought to open up ever greater amounts of Alaska for development without having settled those claims, Edwardsen and others took action which eventually led to a land freeze in the state.

Before the freeze could be lifted and the Trans-Alaska Pipeline could be built allowing for the development of Prudhoe Bay, Native claims had to be settled.

Unfortunately, the terms were never truly negotiated with Alaska Natives, Edwardsen charged. Instead, they were led through a "dance" routine where they were given big appetites to socialize and drink coffee and liquor with the big-wigs in Washington.

"I went through ANCSA completely drunk," Edwardsen said. ". . . . let me tell you, that's the only way I can take some white people, is to be completely drunk!"

Edwardsen said that Native expectations to negotiate a fair and just settlement were dashed. He spoke of laying out a claim for 93 million acres. "It dwindled down to 5.7 million acres," Edwardsen said. "Is that fair and just?"

Edwardsen echoed Katchatag's contention when he charged that Native land had been taken without Native consent and that this was a violation of rights guaranteed to Americans under the Fifth Amendment.

Edwardsen described ANCSA as a "bad model" which had devastateing effects on Native culture and had resulted in Alaska Natives fighting with each other. One of the worst features of the act, Edwardsen said, is that it ignored the disclaimer clause in the Statehood Act where the citizens of Alaska had "forever surrendered" all rights of management of fish and game to the Native people.

While much has been made about the possibility of losing Native lands to alienation and taxation after 1991, Edwardsen charged that Native lands are already being lost "to incompetent [illegible] service [illegible] of [illegible] in ANCSA are going to be lost in bankruptcy."

Edwardsen's analysis was not all bleak. He noted recent gains made by Alaska whalers in gaining worldwide recognition of their right to manage the hunting of bowhead whales. He pointed out a recent U.S. Supreme Court case granting Inupiats on the Arctic slope the right to intervene in a boundary dispute between Alaska and the United States.

That case will be decided by the Supreme Court.

He noted another case where Inupiats are claiming jurisdiction on the sea ice beyond the border of Alaska. He also argued that ANCSA could be changed. "ANCSA is subject to the will of the majority," Edwardsen argued.

". . . . It is not a negotiated settlement. It was lobbied by the forces of a body easily influenced by something else. It is open for amendment. Nothing in ANCSA is sacred!" Edwardsen called on the commission to consider the possibility of an "Alaska Native People Restoration Act."

Mike Albert, the IRA president of the village of Tununak, started out his testimony with strength in his voice, but soon gave in to tears. "When Alaska became a state, only a handful of people signed," Albert said, his voice breaking with emotion.

"The second time, with ANCSA, only a handful of people signed for that. My question is why didn't the real landowners of Alaska be discussed with before everything was signed?"

When he finished, Albert left the table and hurried outside. A young woman ran after him, and grabbed him before he could get far.

"[illegible] you said that," [illegible] giving him a [illegible] "I'm so glad someone finally said that!"

International

views of ANCSA

(Continued from Page Eight)

tory of Australia a land settlement has returned a great deal of land to the aboriginal people. The land is held in trusts for each tribe by a small group of Elders. The land can not be sold or taxed, and the different tribes decide how it will be used or not used in their traditional governments.

Douglas Sanders, professor of law at the University of British Columbia, presented a paper on international law as it relates to indigenous people. Sanders noted that international law as originally applied to indigenous populations was not international at all. Rather, it was a vehicle used by European nations in their dealings with aboriginal populations to insure that their claims did not cross each other, and to help them avoid warfare between themselves.

Today, international law is evolving to recognize the human rights of indigenous people to their lands and governments,

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NATIVE SETTLEMENTS AND NATIVE RIGHTS: A COMPARISON OF THE ALASKA NATIVE SETTLEMENT, THE JAMES BAY INDIAN/INUIT SETTLEMENT, AND THE WESTERN CANADIAN INUIT SETTLEMENT

J.S. FRIDERES
The University of Calgary

ABSTRACT/RESUME

The author describes each of three recent agreements between governments and northern native peoples, the Alaska Native Claims Settlement Act of 1971, the James Bay Settlement, the COPE Agreement still in limbo. The agreements are compared in several areas, and against some potential demands from other groups researching land rights in preparation for the negotiation of claims.

L'auteur décrit trois accords récents conclus entre des gouvernements et des peuples indiens du Nord: la loi sur le règlement des revendications des autochtones de l'Alaska de 1971, la convention de la Baie James de 1975, et le règlement des droits des Inuvialuit sur des terres, l'accord COPE étant toujours dans les limbes. Les accords sont comparés dans différents domaines, et contre des revendications potentielles d'autres groupes participant à des recherches sur les droits sur les terres, en vue des négociations.

INTRODUCTION

The increasing natural resource development in North America is extending into the "frontier" areas and is bringing about the loss of Natives' "traditional livelihood," culture and land. This encroachment has brought about conflict between Natives and Government. The conflict has focused on three types of claims set forth by Natives: Aboriginal rights[1] (as stated in The Royal Proclamation of 1763), Indian Treaties and script settlements, and bank clai
ll of the above claims have, since 1973, been divided into "specif

and "comprehensive" claims. It is the latter that the present paper wishes to focus upon.

After the last treaty was signed in the 1920's, few non-Native people have given the issue of Native land claims any serious attention (Daniel, 1980). Contrary to the non-Native lack of interest in land claims, Natives have been consistent and vociferous in their attempts to settle land claims, particularly "comprehensive claims" (Morisset, 1979). In an attempt to resolve these claims the Federal Government has, in the past decade, created the Office of Native Claims (ONC). However, few bands or native organizations have been prepared to directly negotiate with ONC. Data in Table I show the number of specific claims settled and the status of other Native claims in the past ten years.

The ONC was established after the Supreme Court of Canada ruled on the Nishga land claims case. It was at this time that the Federal Government reversed its official policy of refusing to recognize aboriginal rights and comprehensive land claims.

The ONC researches Native claims, receives a ruling from the Department of Justice and then recommends to the Minister of DIAND as to whether or not the claim should be granted. Final decisions are based upon legal interpretation of the claims although it could argue that "political or policy" implications are also part of the criteria.

Recently, multi-national business ventures and various governments are attempting to "extend" the economy to include lands occupied or reserved for Native people. Business firms are proposing pipelines and other forms of development that cross these otherwise "marginal" lands. Governments have been enlisted in attempts to negotiate contracts which would assign or transfer development rights to business firms. Partially as a result, the governments involved (and in some cases the courts, e.g., James Bay) have actively promoted the establishment of new Native organizations in an attempt to create a Native leadership with the capacity to legally enter into negotiations and contracts that would facilitate development (Bodley, 1975).

Native people, because of past behaviour by government and business, have come to resent and resist major developments affecting them as proposed by the multi-national firms. The present land claims are, in a sense, a process to control the techniques

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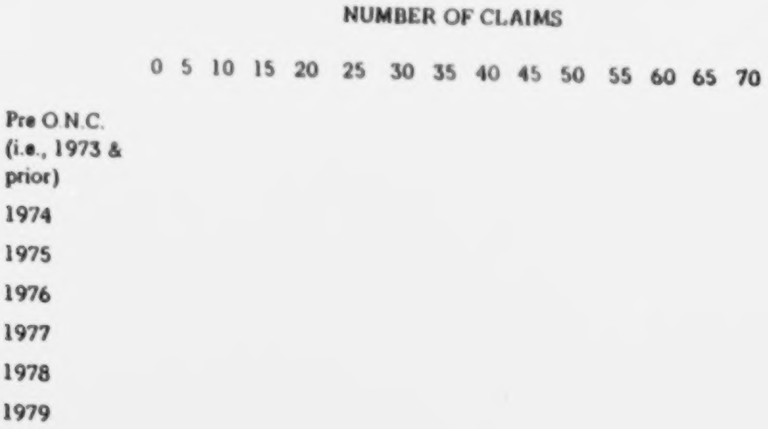
TABLE I: SPECIFIC CLAIMS SUBMITTED FOR SETTLEMENT TO O.N.C. BY YEAR.[1]



[1] Disposition of specific claims since 1970:

12	not pursued
16	referred to another agency such as Indian Affairs Program or Provinces
22	filed by claimants with federal court
45	being reviewed for validity
72	liability denied
57	liability accepted, and settlement under negotiation
8	settled
1	negotiations terminated without settlement
233	

Source: Office of Native Claims, DIAND, 1980

previously used by government or business (Sanders, 1976) and to retain their way of life, or at least to control the rate and nature of change.

Negotiations with the Federal Government are nothing new to Native people, as they have been going on for well over two hundred years. The Treaties (Numbers 1 to 11) established by the Federal Government in Canada (and to a certain extent in the U.S.A.) with Natives provided for reserve lands, monetary payments, medals, flags, and other annuities. In return, Natives would agree to surrender their claim to all other land and live in peace (Cumming and Mickenberg, 1972).

Recently, two major "treaties" have been negotiated between Canadian Natives and the Federal/Provincial Governments--The James Bay Settlement of 1975 and the more recent Western Inuit agreement in principle. Each of these agreements were, in large part, extensions and modifications of the Alaska Native Claims Settlement of 1971. To this extent, we wish to provide a description of the major issues in the three agreements and then to point out their similarities and differences.

Specifically, we will look at the Alaska Native Claims Settlement Act passed by the Congress of the United States in 1971, and in Canada the James Bay Agreement in 1975, as well as the COPE-DIAND Agreement in principle of 1978. A brief history of each settlement will be provided as well as a comparison of selected issues.[2] In addition, a brief statement with regard to the proposed Yukon and Northwest Territories Indians' claims will be introduced. We will include with an overall assessment of the claims settlements, as well as their policy implications for future Native settlements and the position of Native culture in Canadian society.

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ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA)

Not since the 1968 Prudhoe Bay oil discovery has there been an impact on the social economic structure of Alaska as the ANCS Act. Since the purchase of Alaska by the U.S.A. from Czarist Russia in 1867, the status of the lands occupied by Natives has been a matter of controversy. However, in 1884 legislation was established in Alaska that provided that the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them. While it was established in 1955 by the federal court system that Natives did not have legal ownership rights of the lands they used and occupied in Alaska, it did affirm the right of occupancy and use. However, serious attempts to settle the land claims of Natives in Alaska did not begin until 1967, and then not with any real intensity until oil was found one year later. Prior to the actual development of the resou[illegible], a land freeze was implemented. Hence, we find that the settlement with 76,000 Natives was partially a result of moral as well as political and economic forces (Forrest, 1976; Arnold, 1976; Burch, 1979).

Land:

The Natives of Alaska received title to a total of 40 million acres (11% of Alaska) with both surface and subsurface rights. The land is to be divided among 220 village and 12 regional corporations (see map 1). Specifically, the villages receive the surface estate for 18½ million acres of land in the 25 township areas surrounding each village. This land will be divided among the villages according to population. The villages also receive 3½ million acres divided among the villages by the Regional Corporation on "equitable principles."[3]

An additional 16 million acres (selected within the 25 township areas surrounding the villages) will be given to the Regional Corporations. This land is divided among the twelve Regional Corporations on the basis of the total area in each region (rather than on the basis of population).

The last two million acres to be given to the Natives come from existing historical sites, e.g., cemetery sites. In addition, land will be given to each of the Native groups that are too small to qualify as a Native village. Individuals who live outside the villages (or groups) will be given the surface estate to 160 acres. Special provisions were also made with regard to four communities that were defined as traditionally Native but have since become non-native. Natives in these towns will be given land near the town but far enough away so as to allow the town to grow and expand.[4] One last clause has been written into the agreement that if the entire 40 million acres cannot be selected from the initially specified 25 township area surrounding the villages, then land near the 25 townships will be included for possible selection by Natives. Natives have control and ownership over these 40 million acres although they cannot alienate their title to it for 20 years.

To be eligible to receive land or money, a person has to be defined as an Alaskan Indian, Alaskan Eskimo, or Alaskan Aleut. This was defined as any person who is a citizen of the U.S.A., of at least one quarter degree Eskimo, Indian or Aleut (whether living in Alaska or not), and must have been born on or before, and living on, the date of enactment of the Act (December 18, 1971).

Financial:

The Natives defined as eligible will be paid $462,500,000 over an eleven year period[5] and an additional $500 million from mineral revenues received from land now owned by the State or Federal Government.[6] All of the initial monies received by Natives are to be tax exempt. However, for those monies invested which bring a profit, taxes will be assessed.

Social-Political Structure:

Natives in each of the villages are to set up a corporation (either profit or nonprofit in form) so as to be able to take title to the surface estate in the land to be owned by the village. In addition, it will administer the land and receive and administer a part of the money settlement.

Besides the village corporations, there are 12 Regional Corporations (R.C.'s) established (see map 1). The R.C.'s (must be organized on a business for profit basis) will receive all of the initial $962 million and then divide it among themselves on the basis of Native population. Each R.C. must also divide among all R.C.'s 70 percent of the mineral revenues received by it. Each R.C. must distribute among the village corporations in the region not less than 50 percent of the initial settlement and 50 percent of all revenues received from the subsurface estate.

Natives who are not permanent residents of Alaska may set up a 13th R.C. which, while not receiving any land nor mineral revenues of the other R.C.'s, will receive its share of the initial $962.5 million. Each Alaska Native resident is eligible to hold membership in both a regional and village corporation. As shareholders, these individuals may take part in the management of lands and money controlled by the corporations.

Other Aspects of the Settlement:

The settlement extinguishes all claims the Natives may have had based on aboriginal use and occupancy of lands and adjacent waters. Certain lands (80 million acres) have been withdrawn by the government as potential selections by the Natives' R.C., not the village corporations. These are lands that may be suitable for inclusion in a National Park (or are now in a National Forest) Forest Reserve

Wildlife Refuge, or Wild and Scenic River System. For all those lands chosen by Natives, the government maintains the right to give public access and recreational site easements so as to insure the larger public interest is protected.

SETTLEMENTS IN CANADA

Since the last "treaty" between the Chippewa and Mississauga (agreements) in 1923, there has been no comprehensive claims negotiations between natives and Government. There have been a number of specific claims (referred to in the Department of Indian Affairs as "Petitions and Complaints" or 'Claims and Disputes") that have been pursued by Natives, but it was only in the 70's when once again (as in Alaska) mineral exploration and development spurred the Federal Government into dealing with Northern Natives' comprehensive claims.

Since the 60's, Indian organizations have become an important advocate of Native claims in almost all areas of Canada. The level of expertise beyond lawyers also began to have an impact on the claims presented by Natives--people with special skills, e.g., Native languages, political analysts, anthropologists (McConnell, 1980). This change in tactics by Natives has circumvented the traditional reaction of the Federal Government to Native claims, e.i., one of general negative response and attacks on the advocates, rather than addressing the issues. For example, prior to 1951 a claim against the Crown required government approval before it could be taken to court.[7] Other constraints existed, such as the authority of the Department of Indian Affairs to forbid the expenditure of band funds on claims, and forbiding personal financial contributions by Indians for the development of claims.

The James Bay Settlement is the first major contemporary land settlement with Native people that the Federal Government has made. In 1973, the Federal Government presented a policy which explicitly recognized Native claims concerning loss of traditional use and occupancy of land in areas where the Native interest has never been extinguished by treaty or superseded by law (Badcock, 1976; Crowe, 1979).

The Federal Government has taken a position that there may be legitimacy to "Indian title," "Aboriginal title," or "Usufructuary

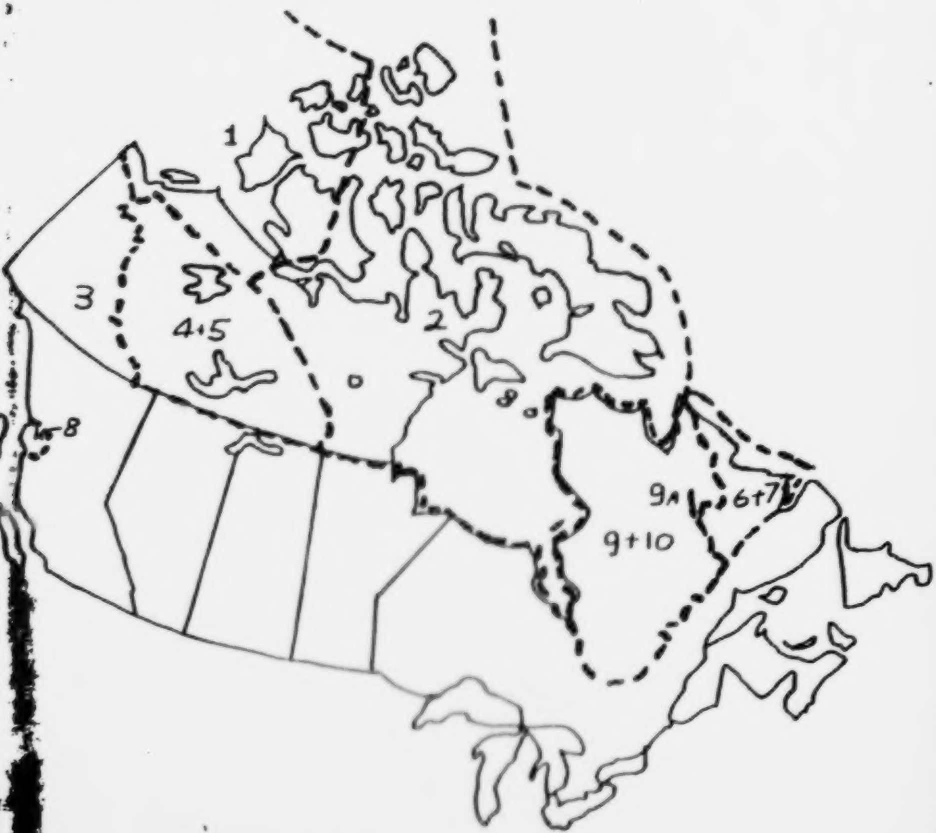
Rights." This position by the Federal Government came about as a result of the decision made by the Supreme Court in regard to the Nisgha claims to land in British Columbia. While the Supreme Court rejected the claims of Natives, it was not on the basis of the actual claims, but rather on the basis of a technicality. Specifically, three judges ruled the Nisgha had no legal claims at this point in history. Three other judges felt that Natives did have a claim. The seventh judge ruled against the Nisgha, not on the merits of the case, but on a technicality and thus the vote stood at four against, three for. The technicality centered on the fact that if the government was to be involved in the litigation, the Attorney General of British Columbia had to give his permission and this had not been done.

To enable Natives to present their claims as effectively as possible, the Federal Government has, since 1970, provided a total of $40.7 million for claims, research and development (forty-two percent in the form of non-repayable contributions, and fifty-eight percent in loans against the settlement of claims). Until 1976, Native claims were presented directly to the Federal Government or indirectly through the Indian Claims Commission, which was established in 1969 to consult with Natives as well as to study and recommend acceptable procedures for dealing with claims. In 1976, a special representative for comprehensive claims was appointed by the Federal Government. This representative has been given a broad mandate to negotiate comprehensive claims on behalf of the government. (Indian Claims Commission-Canada, 1977) As for specific claims, the final decision and the mechanism for their settlement is handled by O.N.C., but was influenced by the deliberations between the Joint National Indian Brotherhood Cabinet Committee convened in 1974 and ending in 1978. Figure 1 illustrates the number of comprehensive claims presently before the government, and the area encompassed by each.

James Bay Settlement:

It was under the Quebec Boundaries Extension Act (1912) that extended Quebec to its present boundaries and also made clear that the Quebec Government recognized the rights of Native people. Because the Federal Government has no constitutional authority (under the British North America Act) over lands and resources of any province, it cannot pass legislation which would be contrary

FIGURE 1: COMPREHENSIVE CLAIMS. AREAS CLAIMED BY NATIVE ASSOCIATIONS



1. Committee for Original People's Entitlement (C.O.P.E.)
2. Inuit Tapirisat of Canada (I.T.C.)
3. Council for Yukon Indians (C.Y.I.)
4. Indian Brotherhood of N.W.T. (I.B.N.W.T.)
5. Metis Association of N.W.T.
6. Labrador Inuit Association (L.I.A.)
7. Naskapi Montagnais Innu Association
8. Nishga Tribal Council
9. Grand Council of Crees (of Quebec) (G.C.C.Q.)

9A. Naskapi of Schefferville

10. Northern Quebec Inuit Association (N.Q.I.A.)

Source: Office of Native Claims, DIAND, 1980 to provincial options in the area of resource development.

During 1965, the Quebec Provincial Government formally noted that it was conducting studies in the James Bay area of Quebec (see map 2) for potential hydro development. However, it was not until 1969 that a tripartite committee (Indians of Quebec Association, Quebec Government, Federal Government) was formed to handle potential claims problems.[8]

Substantive negotiations did not take place until 1973 when the Natives were granted an interlocutory injuction and work on the project was temporarily halted (James Bay Agreement, 1975). It was at this time that the Quebec Provincial Government made an initial offer of settlement to Quebec Crees and Inuit. Concurrently (1974), the Grand Council of the Cree decided to handle negotiations on their own rather than allowing the Indians of Quebec Association to carry out the negotiations.

Cree are defined as those legally defined Indians as stated in the Indian Act.[9] However, it also includes nonlegally defined Cree (as of November, 1974) and their descendants. At present, it is estimated that about 200 nonlegally defined Cree are in the area. An Inuit is defined as any individual (at the time of the signing) possessing a disc number or is of one quarter Inuit blood and was born in Quebec, or ordinarily a resident of Quebec, or is considered an Inuk by the community to which he/she claims affiliation and such other persons as may be agreed upon.

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Land:

The eventual agreement (James Bay Agreement, 1975) creates three different categories of land in Northern Quebec within a territory of 410,000 square miles (60% of the total area of Quebec) (see map 2). The general residential pattern of Cree (Indian) is below the 55th parallel, while the Inuit live above the 55th parallel. While the overall settlement focuses on the more general ethnic residential pattern, groups living outside this general pattern are to be taken into consideration.

Category I will be inhabited only by Cree and Inuit (or others by their consent). The Cree will be allocated 2,000 square miles as reserves. Of this total, 120 square miles will be reserved for the Crees of Great White River (above the 55th parallel). The remainder will be for all other Crees below the 55th parallel to be assigned on a basis proportionate to the population.[10]

The Inuit of Fort George (south of the 55th parallel) are also entitled to part of this total land area based on their total population of Natives involved. The total amount of land would be about 20 square miles of Category I land. The Inuit of Quebec (north of the 55th parallel) will receive 3,250 square miles in Category I land.

Approximately 1275 square miles of Category I land given to the Cree will be administered under the Indian Act. The remainder of Category I land is to be under provincial jurisdiction over such lands but subject to legal safeguards in favour of the James Bay Cree (Inuit of Quebec).

All land in Category I except that being administered under the Indian Act cannot be sold or ceded except to the Province of Quebec. In addition, Quebec owns all the mineral and subsurface rights of Category I land but extraction of these minerals cannot take place without the consent of the particular band or Inuit community.[11]

A second category of land, 25,030 square miles, (Category II) was established for the *exclusive* use of the James Bay Cree south of the 55th parallel. This exclusive use is limited to such traditional activities as hunting, fishing, and trapping. A similar area (35,000 square miles) was established north of the 55th parallel for exclusive use of Inuits.

Land in Category II can be taken away by Quebec for the purposes of development provided such lands are replaced or if Native people wish, compensated.[12] The remainder of the area under consideration (Category III) are those lands to which all people (Native and non-Native) have access under ordinary provincial laws and regulations. However, Natives will receive special consideration in that they will be able to hunt, fish, and trap the year around as well as reserving specific wildlife species for the Natives' use. There are other restrictions that are applicable to non-Natives but are not enforced for Natives in the area, e.g., they can cut wood in this area without paying a stumpage fee.

Financial:

Two hundred twenty-five million dollars will be paid to the natives of Northern Quebec over the next twenty years. One hundred fifty million dollars will be paid to the Inuit for renouncing their land claims by the Federal and Provincial Governments as well as the Crown corporations involved. The first payment of $75 million ($42,250,000 by the Federal Government, $32,750,000 by the Provincial Government), by way of indemnities, will be made over a ten-year period. The second $75 million will be paid by the James Bay Energy Corporation as royalties on hydroelectric power generating capacity installed after projects now underway are completed.[13]

An additional $75 million will be given to the Native people in a lump sum payment of Quebec Government debentures. There will be no tax on the capital amounts paid to the Native people under the terms of the overall agreement. All the monies to be paid to Natives are placed in a corporation or other legal entities established under Quebec law. These entities are to be controlled by the Native people, federal and provincial representation and a board of directors (Rouland, 1979, James Bay Agreement, 1975).

An indirect financial compensation to Native people centers on a plan for a guaranteed income. This program financed by the Quebec Government, will offer a guaranteed income as well as financial incentives to all people who wish to maintain their traditional way of life.

Social-Political Structure:

The Cree and Inuit communities of the region will be self-administered. The local councils established will have a structure similar to those of municipalities elsewhere in Quebec.[14] With these exceptions, the entire region (see map 2b) will be under the jurisdiction of the Municipality of James Bay. Native involvement in the regional municipality occurs in that the Cree have three members to the council and the municipality will have three members. This council is known as the ZONE Council and will have power to pass bylaws (subject to veto by the James Bay Municipality). North of the 55th parallel, thirteen Inuit communities will form the Kativik Regional Government.[15] The basic interest of these regional governments centers on some aspects of Category II land.

A Native development corporation will be established which will administered by Native people. A portion of the funds would be divided among the local communities for community use and local development. A portion of the shares of the corporation could be owned on a collective basis by the communities and a portion could be held by individual Native shareholders with a prohibition to alienate such shares for a period of twenty years.

Other Aspects of the Settlement:

A joint body, the James Bay Advising Committee on the Environment, will be created to review environmental problems of the region. The Cree, Federal and Provincial Governments will appoint four members each. A thirteenth member will be the chairperson of the Hunting, Fishing, and Trapping Coordinating Committee.[16]

The James Bay Development Corporation established a James Bay Native Development Corporation in an attempt to promote economic and social development of the Cree. This corporation (with Native and government representation) will try to aid and stimulate various kinds of commercial and industrial development for Cree. A Joint Economic and Community Development Committee will review and make recommendations concerning the various programs related to the social and economic development of the Cree people.

COMMITTEE ON ORIGINAL PEOPLES' ENTITLEMENT (COPE)

The history of COPE is short (1970) and, although it has performed a vital role for all Inuit in the North, it now only represents the interests of Western Inuit. The initial role of COPE was one of research to provide: (1) a united voice for all original peoples of the Northwest Territories and, (2) to work for the rights of the original people. Part of their efforts resulted in the massive three volume Land Use and Occupancy Mapping. This represents traditional land use, identification of specie, and occupancy of Inuit in the Western Arctic (COPE/Government Working Paper, 1978) (see map 3a).

However, with the emergence of the Inuit Tapirisat (1972) representing Eastern Inuit, COPE focused its efforts on the Western region and began to take on a political role for Inuit (Inuit Tapirisat of Canada, 1974; 1976). The test of their political role came when they began to carry on negotiations with the Department of Indian

Affairs and Northern Development over land settlements in the Western Arctic.

After the initial land claim "agreement" was signed by the Liberal Government, they were defeated and the Progressive Conservatives came into power. Within one year they were defeated and the Liberals were re-elected. By early 1981 COPE broke off negotiations on a final accord with the Federal Government and accused Ottawa of "bad faith in negotiations." COPE claims that internal documents from the Department of Indian Affairs demonstrate that the Minister wanted to unilaterally make changes in the agreement and force Natives to accept "compromises."

Land:

Inuit will receive title in fee simple to 4,200 square miles of land selected in the Western Arctic Region[17] in blocks of 700 square miles near each of six communities.[18] They will also receive a single block of 800 square miles of land (with rights described above) in the Cape Bathurst area (see map 3b).

An additional 32,000 square miles (less any mineral rights) will be selected from the Husky Lake area (10,000 square miles) and from traditional lands of the Inuvialuit in the Western Arctic (22,000 square miles). The Inuit will also receive fee simple to the beds of all lakes, rivers, and other water bodies in the lands selected.[19]

Title to Inuvialuit lands may not be conveyed except to other Inuvialuit individuals or corporations controlled by Inuit or to the Crown's right in Canada. Any lands expropriated by the Federal Government will be covered by alternative lands, considered acceptable by the Inuit or by monetary compensation.

The lands selected are within the Western Arctic Region and are selected from those lands that have been traditionally used and occupied by Inuit.[20] In addition, several criteria were used for final selection: (1) import to Inuit for traditional pursuits, (2) import for Inuit for development, e.g. tourism, (3) historic Inuit sites or burial grounds, (4) areas that might be future Inuit community sites, and (5) lands that do not contain proved oil and gas reserves. All land selected shall be transferred to the Inuvialuit Land Corporation.

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There will also be a Land Use Planning Commission[21] and Land Use Applications and Review Committee for the Western Arctic Region. The Commission will prepare a land use plan (and coastal planning) as well as assess any large scale or long term activities in the area. The Committee (a technical committee) will advise government on the administration of land use regulations as well as develop systems and procedures for administering environmental controls.

Financial:

The Federal Government will make capital transfer payments to either the Inuvialuit Investment Corporation or the Inuvialuit Development Corporation. The schedule of capital transfer payments will begin in 1981 with an initial payment of ten million dollars. From 1982 to 1984 annual payments of $1 million will be made. Five annual payments of $4 million will be made from 1984 to 1989. Then, from 1990 to 1993 annual payments of $16 million will be made. A final payment of $21 million will be made in 1994. The total value (1978 dollars) is $45 million. The financial compensation paid to the Inuit is to be tax exempt but any income earned from this money will be subject to taxes.

Indirect economic benefits for the Inuit have also been outlined in the Agreement. These agreements center on (1) the Federal Government to take measures so as to establish Inuit priority with respect to employment and contracts in the region, and (2) the implementation of specific loans, training programs and marketing assistance. These programs shall only last until the year 2000. In order to enhance Inuvialuit participation in resource development, the Federal Government will allow the Development Corporation a specified number of prospecting permits (10) and mining claims (25).

Individuals eligible to participate in the settlement are those defined as Inuvialuit. This means those people known as Inuvialuit, Inuit, or Eskimo who claim traditional use and occupancy of the land in the Western Arctic Region and are represented by COPE. The specific criteria stated to establish eligibility is that as of the date of the settlement legislation that person is alive, a Canadian tizen and is of Inuvialuit ancestry and was born in the Western Arctic Region and/or that area of the Yukon Territory traditionally sed and occupied by the Inuvialuit and/or Inuvik, or has been a resident of the above areas for at least ten years or, if under ten years of age, is ordinarily a resident in the above areas.[22] The estimated number of people who meet these criteria is 2,500.

Each person enrolled in the Inuvialuit Land Rights Settlement will share equally in the benefits received by various corporations. Thus, each person enrolled will be entitled to receive a life interest only in the same number of equity shares which will not be transferable. Children of Inuvialuit enrolled under the Settlement will be entitled to share equally in all of the benefits of the settlement except they will become entitled to receive a life interest in equity shares in the Investment Development Corporation upon reaching the age of 18 years.

Social-Political Structure:

The Agreement provides for the establishment of a number of Inuit corporations. The Inuvialuit Development Corporation will act as a holding corporation of the Inuvialuit Investment Corporation and will carry on business ventures and investments. The Inuvialuit Land Corporation will hold and control title to Inuvialuit lands. Each community will also establish a non-profit community corporation.

The equity shares in the Inuvialuit Land Corporation will be owned by the Inuvialuit Development Corporation. Any profits that result from developments of Inuit lands will be equally shared by all Inuit through the various corporations.

Other Aspects of the Settlement:

A basic goal of the Settlement is to protect and preserve the Arctic wildlife and environment. Hence, a number of provisions have been included to insure the maintenance of the Arctic ecosystem.

A second factor is that individuals who are not enrolled in the Settlement as Inuit yet can demonstrate that they have hunted and trapped in the area will be allowed (until their death) to continue their activities. A third major component in the Settlement is the creation of a social development program pertaining to social concerns such as housing, health, welfare, education, and mental health. The Federal Government will provide the programs up to $500,000 per year to a total of $7.5 million.

The following three "proposals" are at very rudimentary stages with regard to actual negotiations with the Federal Government. However, the fact that they exist and are being taken seriously by the government suggests that Native ownership and their claims are a force to be reckoned with.

Council for Yukon Indians (CYI):

In 1973, the Yukon Indian Brotherhood presented their proposal to the Federal Government relative to the problems of Northern development. Along with the Yukon Indian Brotherhood, the Yukon Association of Non-Status Indians formed the CYI to negotiate the proposal. While there are specific points in the original (1973) proposal that have changed since then, much of it has remained intact (Yukon Native Brotherhood, 1973).

By 1976 a draft "Agreement in Principle" was drawn up by Natives in the Yukon (both status and nonstatus) and a committee acting on behalf of the Federal Government. From what little documentation and evidence is available, it would seem that Cabinet approved and accepted the agreement but it was rejected by the membership of the Yukon Indian organization.

Like the previous agreements we have discussed, the Agreement would extinguish Native land rights. The basic philosophy of the document (*Together Today for our Children Tomorrow*) would be to guarantee Indian identity and to provide Indians with an economic base equal to those of other citizens. Certain lands would be allocated to Indian people for their residential use, traditional pursuits, historic preservation and economic development. Land selections would be made prior to a final settlement. Some land (1,200 square miles) would be given Natives *fee simple* while other lands (17,000 square miles) would give Natives exclusive hunting, fishing and trapping rights. After the land settlements are made, an Indian controlled corporate structure (similar to that in Alaska) would take over.

With regard to fiscal affairs, the document only makes reference to a gross royalty on all natural resources. However, additional documents suggest that there would be a cash compensation ($70 to $90 million over a long period of time) as well as tax exemptions for certain lands. Five years after the initial agreement was drafted there has been no further agreements between the Council of Yukon Indians and the government.

Metis Association of the N.W.T.:

In 1977, the Metis made their formal proposal (Our Land, Our Culture, Our Future) to the Government of Canada with regard to their claims in the North. The central philosophy of this proposal is to preserve the land and the culture. This proposal, unlike others we have discussed, does not make a distinction between the lands to be retained by Metis and those to be given up. Ownership is conspicioush absent from the document. Rather, they focus on the issue of CONTROL. Control of land would take place by action of a Native land use regulatory board. All lands under the control of this group would be subject to the veto with regard to any proposed development for the land (Daniels, 1979).

There would be a cash payment as compensation for past losses. Some proportion (as yet unspecified) of this money would be distributed to older people now, while the remainder would be invested for future use--a kind of "Heritage Fund" for the North. A second financial compensation, similar to the James Bay Agreement, would be in the form of a guaranteed annual income for those who prefer to retain and live in the traditional lifestyle.

Indian Brotherhood of N.W.T.:
(March, 1978 they changed their name to Dene Nation)

In 1976, the Dene proposed their Agreement (Dene Declaration) in principle on land claims. Their proposal seeks a formal recognition of their rights as a people and a political entity. They demand the right to recognition, self-determination and ongoing growth and development as a people and as a nation. The Federal, Territorial and various Provincial Governments have reacted negatively against such a proposal.

The underlying notion is that aboriginal title to Native land must be officially recognized and not extinguished. They wish to retain ownership and control over much of their traditional land. The Dene would have total control over decisions concerning developments on their land.

Financial arrangements would be in two forms. One, any developments on Dene land would result in some payment to Dene.

Two, the Government of Canada would compensate the Dene for past use of their land.

In both of the above cases, the Federal Government has recognized the legitimacy of the land claims but rejects the "political" component of the claims. Recently the Federal Government has refused to continue discussions with the two separate groups (Metis and Dene). Only if they merge into one group will the Federal Government continue negotiations.

Summary:

Since 1973 the Federal Government has publically indicated that they recognize comprehensive land claims and will "negotiate" settlements but, at the same time, it continues to support development projects that threaten the land and which Natives argue is the very basis of Native culture and survival. Natives are told they must make one of two choices in terms of development: development as industry and government dictate it, or return to a total subsistence living. They are not given a third (and viable) alternative, which is to control development (and control of land is an integral part) and use it as a tool to evolve their own society.

Non-natives assume that economic growth is an unquestionable good and large-scale resource extraction is necessary. This policy was most forcibly stated in the 60's by Diefenbaker, but it still remains the guide-line for today.[23] As Hamelin (1979) points out:

> . . . white colonization of Canada has not permitted the indigenous peoples to develop fairly and that an excessive degree of dependence has been created . . . . A logical method of redressing the situation would be to provide the Amerindians with powerful economic means, the utilization of which they could decide for themselves. (P. 202)

There are four methods that traditionally have been used to resolve the conflicts that now exist between Natives and non-Natives: administrative, litigation, legislative and negotiation. The administrative procedure is to form a "commission" to study the problem and advise government. Commissions generally do not have the power to make decisions, only recommendations. Cummings (1976) clearly demonstrates that litigation is also unacceptable. The courts must take a yes-no approach to the claims, when it would seem that this is an unacceptable approach to the problem. In addition, litigation is expensive, time-consuming, and abounds with "technical uncertainties" which require further litigation. Legislation allows the parties to resolve the issue without taking a yes-no approach, and encompasses the fourth alternative--negotiation. (Pimlott, et al., 1973)

Because of the stance the Federal Government took in 1969, Natives have looked to the courts for a settlement. However, partially because of the decisions involved in the James Bay and Nishga cases, they are now moving toward a legislative negotiated approach. It remains to be seen whether or not the Federal Government will agree with such a procedure.

The negotiations now taking place have three different perspectives which can guide their approach in the negotiations. extinguishment, modified extinguishment and recognition of Native title to land (Hunt, 1978). To date, all of the negotiations entered into have taken the first perspective.

The settlements discussed above have one common element--the surrenders made by Native people. In the settled cases, the Natives ceded, released, surrendered and conveyed all their Native claims, rights, titles, and interests to the land under consideration and under the settlement all claims, rights, titles, and interest will cease to exist. In return for the above, the Natives received land, financial compensations, and special promises or programs.

The settlements are predicated on the assumption that "assimilation" is inevitable and necessary. The settlements have built-in clauses which suggest that by the turn of the century, Natives will have integrated into the larger social system and thus no longer warrant special attention. All three settlements move on the implicit assumption that Native culture is dying and it will only be a short time before complete acculturation takes place.

Prior to the COPE-DIAND Agreement the proposals for settlements of Native claims in the Canadian North have included proposals to restructure the Northwest Territories' government. Natives have also argued that the Northwest Territories be divided into new political regions in which the Native populations would have the dominant voice in political matters.

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This approach was considered explicitly in the Carrouthers Commission of 1966-77 (Canada 1966) and implicitly in the Berger Report (1977) and rejected by both. While the Northwest Territories' government has always opposed such an approach, the Federal Government has only recently stated its position in its publication of "Political Development in the Northwest Territories." The approach basically agrees with the territorial government's position and it argues that problems of political development are matters separate from the resolution of Native land claims.

The passage of the ANCS Act in 1971 would set the stage in terms of the contents of settlements to be used by the Canadian government.[24] The Federal Government has tried to implement a non-adversarial adminstrative approach to the settlements. This approach has been based on the Federal Government's definition of their relationship to Native people--trust, guardian/ward (Daniel, 1980). Litigation has not been chosen by the Federal Government as an appropriate process to the settlement of Native claims. Using the non-adversarial-administrative approach, the Federal Government felt that settlements would be made easily and cheaply without lengthy negotiations or court battles.

Until recently, Indians have chosen to approach the claims issues from an adversarial approach. Their past dealings with the Federal Government have more than adequately convinced them that anything less than an adversarial approach (forcing the government into the courts) would mean their claims would, as they have for the past hundred years, be unresolved. They have argued that administrative (and, in some cases, legislative) settlements are subject to the constraints of time and space, e.g., political considerations may result in a "good" settlement at one time with one group, but not at a different time and place. The adversary approach-lends itself to the litigation process, but Natives have been hampered in their efforts because of a lack of money and "evidence."

From the two approaches outlined above, a form of negotiations (some structured, some unstructured) has emerged with legislative authority to implement the settlement. However, the government has viewed the negotiation process as a form of implementing broad social and economic policies. On the other hand, some Natives have been accused of using the process of negotiation as a forum for promoting political ideologies. Until there are clear rules of procedure as to how the negotiations should proceed, the terms of reference and agreements as to how decisions are to be made, the negotiation-legislative process is also doomed to failure. The Federal Government, in the negotiations, must be willing to compromise in final settlements; Natives have been forced to compromise for the past one hundred years.

The Government of Canada is committed to an Extinguishment Approach. It intends to retain ownership and control of non-renewable resources. It has, however, been willing to negotiate ownership and control of some renewable resources and of some lands to be transferred to Native groups.

The second major obstacle for agreement between the Federal Government and Native groups lies in the area of political control. In the cases where Native people propose political control (along racial lines), the government has flatly rejected these proposals. On the other hand, the Federal Government is willing to discuss decentralization to local communities and residence requirements for political participation.[25]

Natives have become adamant that any settlement made will provide for some maintenance of identity and self-determination while at the same time allow for orderly development in such a manner that it helps them. They have tried to accomplish the above by utilizing a negotiation stance that has the following elements: ownership of land, special hunting/trapping rights, access and use of traditional lands, financial compensation and finally some mechanism to ensure Native participation (at all levels) in the development process.

Thus far, government and businesses have objected to meeting all of these conditions or only minimally meeting some of the conditions. However, it is equally clear that Native people are convinced that these conditions must be met if Natives are to achieve the difficult goals of preservation of identity and integration into mainstream Canadian society.

NOTES

1. "Aboriginal title" is generally interpreted as the territorial range rights of an identifiable nomadic group over a wide but definable area. The concept has not been defined in Canadian, British, or International law (Brown and Maguire, 1979).

2. For a more legalistic interpretation of land claims, and for comparisons with land claims outside North America, see Hunt (1978).

3. The regional corporations have received the subsurface estate of the 22 million acres patented to the villages.

4. Subsurface rights for all land in this last two million acre category are held by the Regional Corporation.

5. The funds will come from the U.S. Treasury.

6. This is basically two percent of the revenues from mineral leasing activities on both state and federal level.

7. The reader should consult the *Debates of the House of Commons*, Canada January 29, 1953, p. 1471.

8. The Northern Quebec Inuit Association has always acted for the Inuit of the area.

9. The area is inhabited by about 20,000 including 6,000 Crees and 4,000 Inuits.

10. The Eastman Band will be given an additional 20 square miles of reserve land and an additional 30 square miles of Category II land. Moreover, the band will obtain a further 75 square miles of Category I and 100 square miles of Category II land.

11. Soapstone deposits will be owned by the Natives.

12. Quebec has the right to take away up to 5,000 square miles from the Inuit for the purpose of development without being obliged to replace such lands or compensate the Inuit.

13. If the corporation by the end of 1986 has undertaken no new power projects, the Quebec Government will be obligated to pay the second $75 million.

14. These are communities situated on Category I land.

15. Each community will have one councillor on the regional government.

16. A government/native body that has been created to govern the harvesting activities of Native people in the region.

17. The region is defined to the west by the political Yukon/N.W.T. boundary. Although this omits the Yukon North Slope, coast and offshore, that area is part of the traditional region that the Inuit continue to use. The southern boundary follows the tree line. The South Eastern portion separates the land use area of the Paulatuk and Homan Inuvailuit from that of the Inuit of Coppermine and Cambridge Bay. This boundary is carried north along a meridian to preserve the symmetry and integrity of the region.

8. This includes all minerals, whether solid, liquid or gaseous as well as all granular materials.

19. Some exceptions are made, e.g., navigable rivers. In addition, the Inuvialuit must provide sand and gravel needs for communities and the municipal needs of Inuvik and Tuktayaktuk.

20. This was determined by the Land Use and Occupancy Study that preceded the settlement.

21. This committee will have two Inuit, one from each of the Federal and Territorial Governments and a fifth to be appointed by the Minister of Indian and Northern Affairs.

22. An enrollment authority, comprising two representatives of COPE and one from the Federal Government, will be responsible for the entire enrollment process. Any person wishing to appeal a decision of this committee may do so at the Federal Government's expense.

23. I am indebted to one reviewer of this manuscript, who pointed out that it may be premature to view these settlements as guided by policy. Rather, he argued that it could be participants trying to put words to a direction in which they discover themselves to be moving while in the process of negotiating. Thus the directing "force" may be the cumulative impact of a theatre of legal adversaries in a particular context.

24. The Canadian Government used the United States Indian Claims Commission as a model upon which they built the ONC, even though they recognized differences in the nature of claims being presented by Natives.

25. Even though the settlements are very similar, the impact upon Natives may be differential because of the difference between state and provincial political, economic and legal structures. The impact of the borough structure upon Natives' social and economic well-being is thoroughly discussed by Morehouse & Leask (1980).

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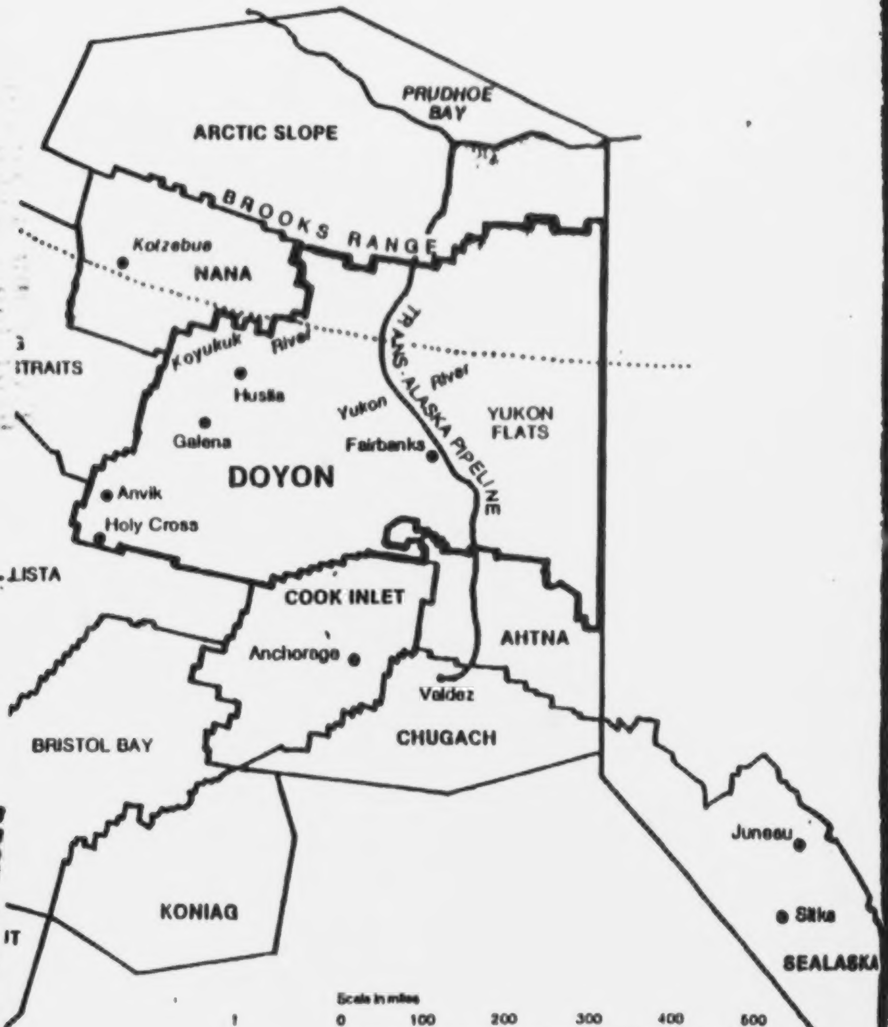
NATIVE DEVELOPMENT CORPORATIONS AND REGIONS IN ALASKA



PRUDHOE BAY
ARCTIC SLOPE
BROOKS RANGE
Kotzebue
NANA
Koyukuk River
G
STRAITS
Huslia
Yukon River
YUKON FLATS
Galena
Fairbanks
TRANS-ALASKA PIPELINE
DOYON
Anvik
Holy Cross
LISTA
COOK INLET
AHTNA
Anchorage
Valdez
BRISTOL BAY
CHUGACH
Juneau
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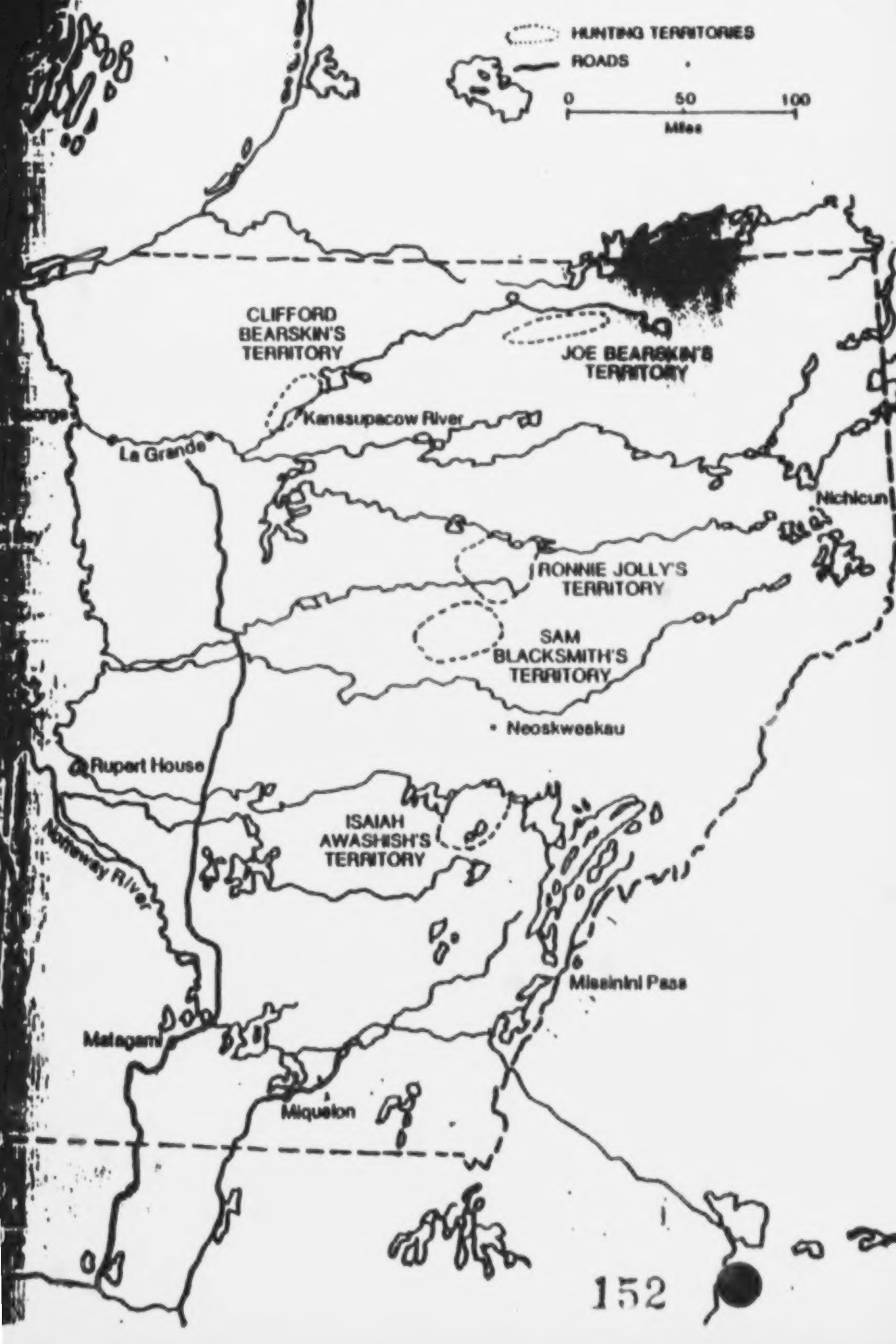
JAMES BAY REGION WITH SOME HUNTING TERRITORIES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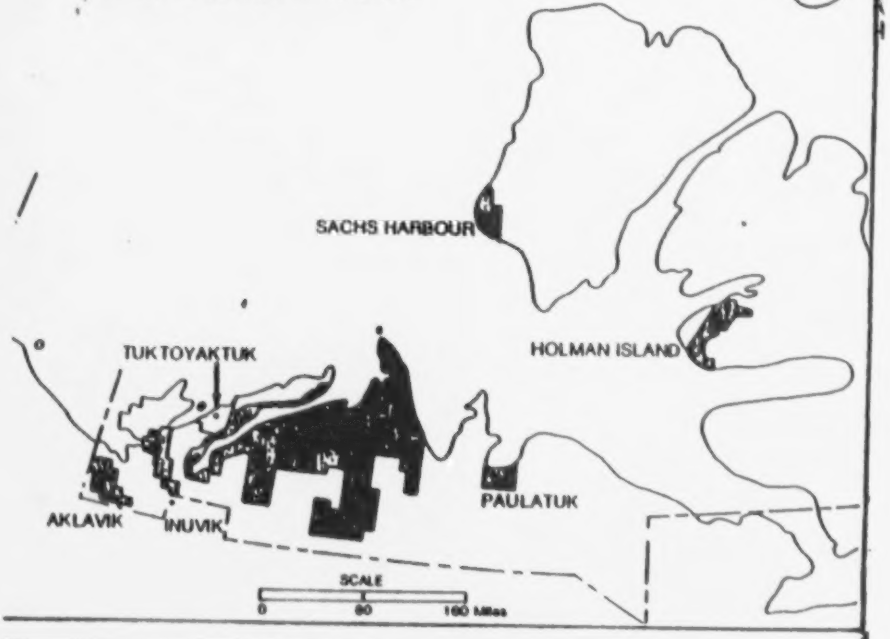
La Grande
Nichicun
RONNIE JOLLY'S TERRITORY
SAM BLACKSMITH'S TERRITORY
Neoskweskau
Rupert House
ISAIAH AWASHISH'S TERRITORY
Nottaway River
Missinini Pass
Matagami
Miquelon

ANDS SELECTED COPE AGREEMENT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AKLAVIK
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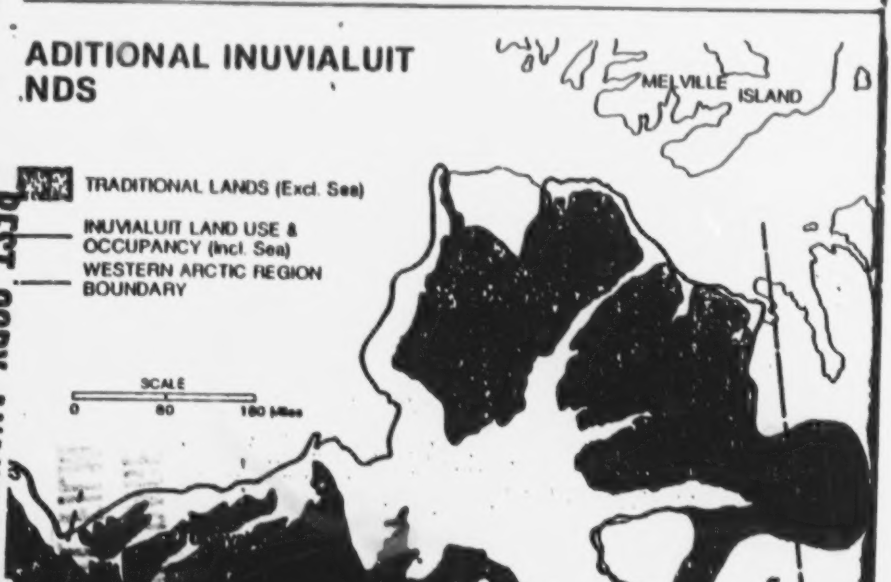
ADITIONAL INUVIALUIT NDS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TRADITIONAL LANDS (Excl. Sea)
INUVIALUIT LAND USE & OCCUPANCY (Incl. Sea)
WESTERN ARCTIC REGION BOUNDARY
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CANADIAN INUIT LAND CLAIMS AND ECONOMIC DEVELOPMENT

Part 1 of 2 Parts

By Richard G. Condon

To the east of Alaska extends a vast territory of arctic and subarctic wilderness which lies under Canadian jurisdiction called the Northwest Territories (N.W.T.). Dispersed throughout the 1.3-million square miles which make up this mineral and oil rich territory are 8,000 Indians (Dene), 15,000 Inuit, 5,700 Metis[1] and 17,000 whites. As in Alaska, the wilderness areas of northern Canada are being subjected to increasing industrial development in the form of lead-zinc mines, gas and oil pipelines, oil and mineral exploration, road construction, and year-round shipping in arctic waters. Recent estimates have calculated that more than 50 billion dollars will be spent on major development projects in the north between now and the year 2000. For the 29,000 Dene, Metis, and Inuit who reside in the N.W.T., there is no turning back to a more traditional and less harried way of life.

In order to benefit from and maintain some control over the development process (as well as to avoid the negative social and ecological consequences of development), these Native peoples have been forced to negotiate with the federal government of Canada. Central to these negotiations have been the issues of aboriginal rights and land claims, which Native groups feel must be settled before any large scale development can take place in their homeland.

Despite the publicity that land claims and economic development in the N.W.T. have received in the Canadian press, very little of this information has filtered southward to the continental U.S. or westward into Alaska. The present article will give a brief overview of economic development, land claims, and negotiations concerning aboriginal rights among the Inuit of northern Canada, with special reference to the Northwest Territories. Due to the immensely complicated nature of these issues, it is possible to concentrate only upon the major developments affecting the Inuit in these areas. At the end of this article a brief list of suggested readings is provided for those interested in pursuing this topic in greater detail.

LAND CLAIMS IN NORTHERN CANADA: JAMES BAY AND THE NORTHERN QUEBEC AGREEMENT

A number of developments in the early 1970's led to the initiation of the land claims process in northern Canada. The first and most obvious of these, was the signing of the Alaska Native Claims Settlement Act in 1971 which called attention to the noticeable lack of such negotiations in Canada. The second development was the appointment of Dr. Lloyd Barber as Canada's Commissioner of Indian Claims in 1969. This was followed in 1973 by the announcement of an official government policy on Native claims, including the creation of the Office of Native Claims in 1974 and the allocation of government funds to Inuit and Indian organizations to support the claims process.

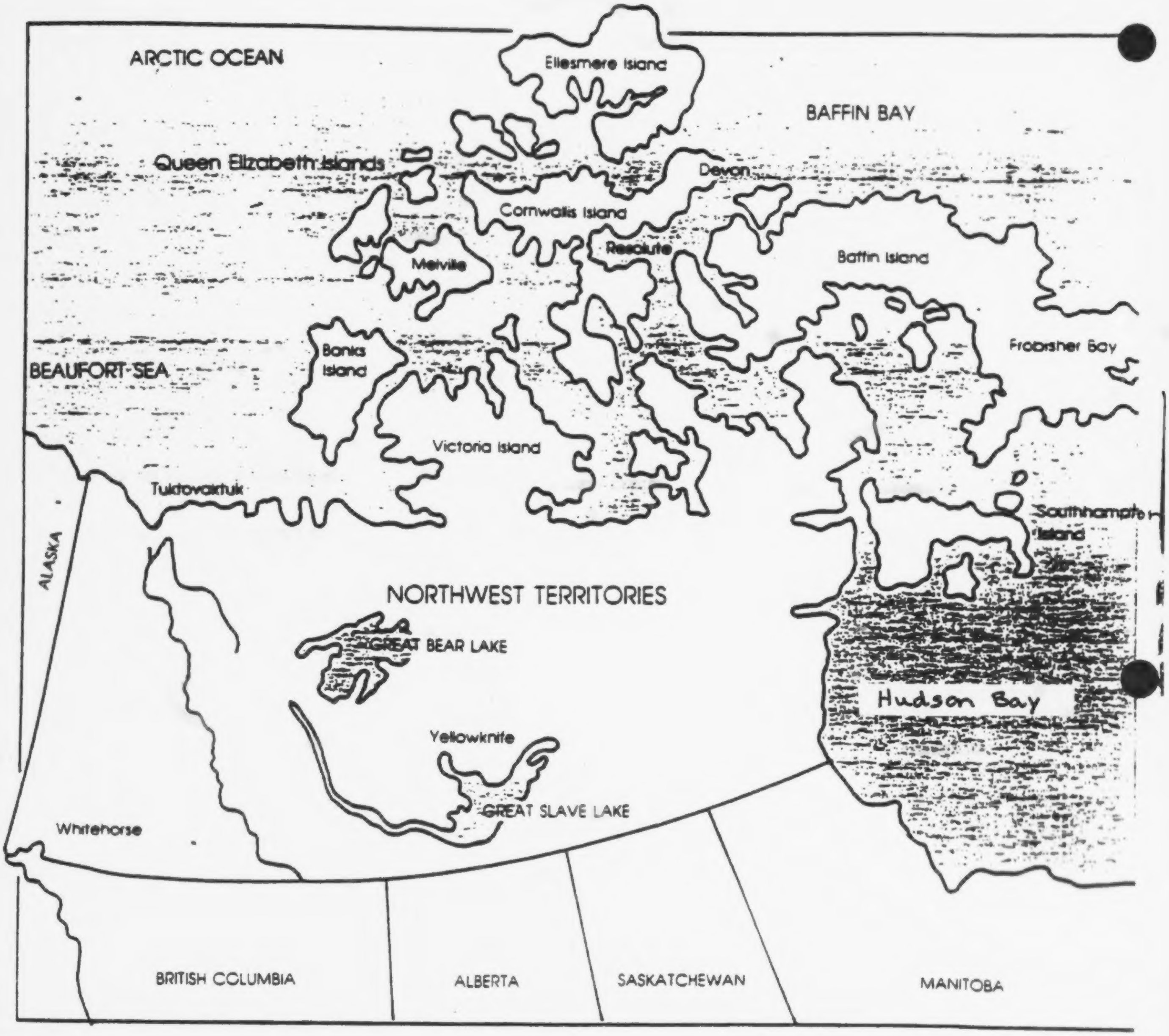
> *...these Native people have been forced to negotiate with the federal government of Canada*

The importance of settling land claims became immediately apparent to the Cree and Inuit of Arctic Quebec who were beginning to mobilize their opposition to the James Bay Hydro-Electric project which involved the construction of a large dam complex on the La Grande River and flooding of thousands of acres of land. Land claims negotiations commenced in early 1974. Later that year, an Agreement in Principal was signed and the final agreement, the *James Bay and Northern Quebec Agreement*, was signed on November 11, 1975, thus becoming Canada's first modern land claims treaty.

As a result of the *James Bay and Northern Quebec Agreement*, 6,500 Cree and 4,500 Inuit relinquished aboriginal title to about half of Quebec in exchange for approximately $225 million to be paid over a 20 year period. They also received proprietary rights to 5,400 square miles of land and exclusive hunting, fishing and trapping rights to 60,000 more. In exchange, the province of Quebec was allowed to build the $15 billion James Bay Hydro-Electric project. Quebec also agreed to continue providing financial support for Native-run regional governments, school boards, and economic development corporations.

Even before the final signing of the agreement, there was substantial discord among Inuit communities and leaders regarding the whole land claims process. Many were extremely critical of extinguishing aboriginal title in exchange for monetary settlement, regardless of the size of that settlement. Three Inuit communities refused to take part in the process and in response established a seperate Inuit organization opposed to the land claims agreement. Now, ten years later, it is apparent that many of these earlier fears are being realized. Despite the successful establishment of an Inuit controlled school board and regional economic development corporation (Makvik Corporation), many Inuit communities in Northern Quebec are displeased with the lack of progress being made with regard to the original agreement. Many of the problems are due to pronounced ambiguities inherent in the original land claims agreement. For example, during the negotiation process, the government's responsibility for certain health, social, and economic programs were specified, but no precise details or implementation dates were established.

On March 26, 1980, Makvik Corporation submitted a list of complaints to the House of Commons standing committee on Indian Affairs and Northern Development. In this 72-page document, the federal government was accused of not living up to its legal and moral respon-


ARCTIC OCEAN
Ellesmere Island
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Queen Elizabeth Islands
Devon
Cornwallis Island
Resolute
Melville
Baffin Island
Banks Island
BEAUFORT SEA
Frobsiher Bay
Victoria Island
Tuktovaktuk
Southhampto
Island
ALASKA
NORTHWEST TERRITORIES
GREAT BEAR LAKE
Hudson Bay
Yellowknife
GREAT SLAVE LAKE
Whitehorse
BRITISH COLUMBIA
ALBERTA
SASKATCHEWAN
MANITOBA

sibilities. Among other things, the government had failed to build airstrips in the communities as agreed to in the original settlement, had failed to provide adequate technical, professional, and financial assistance to Inuit businessmen, and had significantly reduced funds for a housing program agreed to by Makvik Corporation and the Quebec Housing Authority. In the summer of 1980, the federal government started a review of the agreement's implementation and uncovered evidence supporting Makvik's claim. In the summer of 1982, the federal government agreed to pay Northern Quebec Inuit $29.1 million in catch-up funding over a five year period which will be used for the development of water and sewage facilities, schools, and housing. Seperate negotiations are being planned with the provincial government of Quebec, and it will probably be several years before all the ambiguities in the original agreement are ironed out.

POLITICAL FRAGMENTATION AND REGIONAL INTERESTS

Perhaps one of the major obstacles to the settlement of land claims in the Canadian Arctic has been the high degree of fragmentation among various Inuit organizations. Such political fragmentation is further complicated by the wide distribution of Canadian Inuit communities in three geographically and politically distinct regions of Canada (Labrador, Quebec, and the Northwest Territories). In Canada, this lack of political centralization has made it impossible for various regional Inuit organizations to work together for a comprehensive land claims settlement. Such settlements must be negotiated separately for each region. This situation is [illegible] dramatic contrast to Alaska where land claims negotiations occurred in one politically and geographically unified region, making possible the orchestration of a general land claims settlement involve

BEST COPY AVAILABLE

ng all Alaskan Natives. Even within the N.W.T., the wide distribution of Inuit communities represented by different organizations has made land claims a highly specific process to each geographic region. Often fragmentation has come about by the Inuit themselves who feel that they may be better represented by a local organization closer to home than a national organization. Add to this the fact that the interests and goals of Inuit, Metis, and Dene Organizations in the N.W.T. do not always coincide with one another, and it becomes apparent why land claims in Canada is an immensely complicated matter.

Central to these negotiations have been the issues of aboriginal rights and land claims,...

The best example of this political fragmentation can be seen in the parallel land claims negotiations of Inuit Tapirisat of Canada (ITC), representing the Inuit of the central and eastern Arctic, and COPE (Committee for Original People's Entitlement), representing the Inuvialuit of the Western Arctic. In February of 1976, ITC, representing at the time all the Inuit of the N.W.T., submitted a detailed claim called "Nunavut." Negotiations with the government continued for some months after which time the proposal was withdrawn since it was felt that the document was too heavily laden with ideas from non-Inuit consultants.

While the ITC claim was set aside for a while, the Inuvialuit of the Western Arctic moved ahead with their own land claims, ostensibly because they were frustrated with ITC delays and wanted land claims in their own area settled as soon as possible. Their rush was partially inspired by the possibility of the Mackenzie Valley Pipeline being constructed. This pipeline proposal, submitted by various Canadian Gas companies, would have involved the construction of a gas pipeline from Prudhoe Bay on the North Slope of Alaska to the Mackenzie Delta and down to the Mackenzie Corridor to Alberta. Thus, there was both the desire and the need to settle land claims before the onset of any major-industrial development which would eventually hamper the land claims process. Ultimately, extensive hearings on the Mackenzie Valley Pipeline were held by Chief Justice Thomas Berger between 1975 and 1976. The Mackenzie Valley Pipeline Inquiry travelled to 35 communities in the Mackenzie Valley, the Delta and Beauford Sea region, and the Northern Yukon where testimony was heard from Native residents in their own language. The final report of this inquiry, published in 1977, concluded that it was still much too soon for a major pipeline to be constructed and that a moratorium of at least 10 years should be established.

In submitting their claim, COPE took the original ITC proposal and modified certain sections to make it fit the western arctic region. The final claim, called "Inuvialuit Nunangat" was submitted in May of 1977. Negotiations continued through 1977 and the first part of 1978, culminating in the signing of an Agreement in Principle in October of 1978. While there were still a number of details to be negotiated, both parties agreed that a final agreement would be signed within a year's period. Unfortunately, four years later, the final agreement has yet to be signed. A temporary changeover of government personnel, specifically the appointment of a new Minister of Indian Affairs, has resulted in setbacks in the final negotiation process. Inuit negotiators have blamed the lack of progress on government intransigience and high turnover in government negotiators. A number of Inuit leaders, frustrated at the lack of progress, have accused the government of failing to negotiate in good faith or to commit themselves to a final resolution of Inuit land claims.

NUNAVUT AND DIVISION OF THE TERRITORIES

While the Inuit of the western arctic region embarked upon their own land claims, ITC submitted a revised claim in December of 1977. While this new claim discussed such things as hunting rights, economic self-determination, and compensation, the major emphasis was upon the creation of a new territory called Nunavut, run by Inuit and eventually attaining provincial status within federation. Nunavut would cover that area of the Northwest Territories north of the tree line and would consequently hold an Inuit voting majority. In this way, ITC feels that the Inuit residents of the N.W.T. will have more political control over the nature and direction of political and economic development in their homeland.

The remaining southwestern portion of the territories would be a Dene and Metis nation called Denendeh ("Our Land"). This new territory would be made up of approximately 6,000 Metis and 8,000 Chipewyans, Slaveys, Dogribs, Loucheux, and Hare Indians. The Denendeh government would be a democracy based upon existing band organization, relying heavily upon referenda so that political decisions can be made through consensus. Nunavut, on the other hand, would be based upon a parliamentary system similar to that of Ottawa.

...there was substantial discord among Inuit communities and leaders regarding the whole lands claim process.

Little action was taken on the Nunavut proposal until May of 1981, at which time the Legislative Assembly of the N.W.T. agreed to hold a territorial wide plebiscite on April 14, 1982. The results of the plebiscite indicated that the majority of Native residents of the N.W.T. were in favor of division, although the exact details and timetable had yet to be negotiated. As predicted, the eastern N.W.T. which is physically isolated from the territorial capital in Yellowknife and where Inuit are the predominate ethnic group (85 percent), voted overwhelmingly in favor of division. However, in the western part of the N.W.T. where there is a substantial mixture of natives and non-natives, the proposal was rejected by a slim margin. As a response to the plebiscite and after intensive study of the Nunavut proposal, the Minister of Northern Affairs in November of 1982 announced that the government was willing to accept, in principle, the division of the N.W.T., but added that attainment of provincial status was not a realistic goal. The minister stipulated that four conditions had to be met before division could become a reality:

1) The first stipulation is that the demarcation of a boundary between the two new territories which is acceptable to all the parties involved in the negotiations, including the Government of the N.W.T., ITC, COPE, the Dene Nation,

(Continued on page 37)

EKWOK (cont. from pg. 9)

Patrick Chiklak and Gordon Avovak are two of the five students who attend William Nelson High School in Ekwok. Patrick and Gordon served as student interns with Alaska Native News this past summer under the Cook Inlet Native Association Youth Employment Program. The previous article which they wrote was one of their assignments. ■

INUIT LAND (cont. from pg. 12)

and the N.W.T. Metis Association. This stipulation may in fact be one of the more difficult to resolve due to the pronounced overlap in territorial claims, especially in the western Arctic where the Dene Nation and COPE have been struggling for years over which lands can be legitimately claimed by each Native organization.

2) The second condition deals with the distribution of powers among local, regional, and territorial levels of government. The federal government believes that it is necessary for northerners to attain consensus over the administrative structure of the new territories being created.

3) The third stipulation deals with the final resolution of land claims being made by various Inuit, Metis, and Dene organizations before division can be successfully accomplished.

4) Lastly, the federal government wants proof of continued support among N.W.T. residents in favor of division of the territories.

Only when these four conditions are met will the federal government proceed with the creation of these two new territorial entities. Given the scope of these conditions, however, it will be many years before any significant progress is made. Both COPE and ITC have agreed to these conditions and hope to have their respective land claims settled within the next two years. ITC has already established a Nunavut Constitutional Forum designed to negotiate the finer legal points of division.

Footnotes:

[1] The term "Metis" refers to the descendents of European fur traders and their Indian wives. The Metis of the southern Mackenzie region emerged as a distinctive native ethnic group in the Red and Saskatchewan river valleys during the 18th century. Being of French-Cree heritage, they were bilingual in both languages and consequently moved west and north in the service of the fur trade. The Metis of the northern Mackenzie represent the descendents of early Scottish and English Hudson's Bay Company personnel who married Athapaskan wives. Also bilingual (in English and an Athapaskan language), the Northern Metis served as cultural intermediaries and interpreters in the northern fur trade. ■

SAMI PEOPLE (cont. from pg. 16)

helpful and made the tour a success. Some of these were: Bill Demmert from the University of Alaska in Juneau; Ray Barnhardt, University of Alaska, Fairbanks; Dennis Tiepelman, NANA corporation in Kotzebue; Nina Sinkey, Chukchi Community College; Caleb Pungowiui and Clinton Grey, Kawerak, Inc. in Nome; and Martin Ivan and Bob Corrigal, Association of Village Council Presidents in Bethel.

In Anchorage those assisting included Clifford Black, President, Anchorage Native Caucas; the Alaska Native and American Indian Organizations on the Anchorage Community College (ACC) campus; Elaine Abraham, director of ACC Student Orientation Services; Judy Ramos, Tanasha, Sharon Eluska; and more.

For all involved, and the hundreds of people the Samis met, the visit was successful. Positive impressions and bonds were made. ■

Carol Hoshiko is a Freelance Writer and serves as the Public Information Officer for the University of Alaska, Division of Community Colleges, Rural Education and Extension.

MOLLY HOOTCH (cont. from pg. 19)

regulations. When we won the 1981 shakeup in the regulations, and a commitment from the Department of Education to enforce them, the Northwest Arctic School District even tried (unsuccessfully) to stop the regulations in court.

Today, much of the early resistance to a state-imposed requirement for village participation seems almost forgotten. Every REAA that is under the 05 regulations complies with them (any district which fails to do so faces a loss of state funding), and some REAA officials have surprisingly good things to say about the requirements. Several districts (among them Northwest Arctic) now use the 05 process in all their schools, including those where their use is not legally re-

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CANADIAN INUIT LAND CLAIMS AND ECONOMIC DEVELOPMENT

By Richard G. Condon

Part 2

One of the major concerns of all Inuit and Indian groups in the N.W.T. is that there be a moratorium on economic development projects in the territories. It is felt that major development projects may adversely affect the land claims process since the federal government operates on the principal that lands which have already been developed are not open to negotiation. As a result, such lands are lost forever to aboriginal inhabitants. In addition, there is the expressed concern that large-scale development projects may do irreparable damage to the arctic ecosystem which may adversely affect the hunting and trapping activities of northern communities. The most significant threat in this regard comes from the Arctic Pilot Project, a plan by Petro-Canada, Nova Corporation, Melville Shipping, and Dome Petroleum to ship liquified natural gas from the High Arctic to southern Canada. The consortium's proposal would involve the construction of a 160 kilometer pipeline from Panarctic Oil's Drake gasfield to liquification facilities at Bridport Inlet on Melville Island. This liquified natural gas (LNG) would then be shipped through Lancaster Sound, and down Davis Strait to a regasification plant in the maritimes. Shipping of the liquified gas would continue on a year-round basis using large ice-breaking transport ships (Class 7).

If successful, the Arctic Pilot Project would be expanded to using nine transport vessels making a total 250-270 transits through the Northwest passage per year. While the shipping of liquified natural gas, oils, and minerals from the High Arctic would increase employment in the area, Inuit organizations fear that year-round shipping in Lancaster Sound and Davis Strait could do irreparable damage to the environment. Both the Canadian Inuit and the Inuit of Greenland, who will also be affected by the shipping of natural gas, stand strongly opposed to the Arctic Pilot Project. In September of 1982, the National Energy Board of Canada decided to adjorn indefinitely its hearings into the Arctic Pilot Project. This decision was met with great relief on the part of ITC and BRIA (Baffin Region Inuit Association), whose joint intervention against the project had run up a bill of $450,000, primarily in legal fees.

Despite this temporary reprieve, other major development projects are being planned and executed. These are being watched carefully or even opposed by Inuit organizations. In may areas, government and industry are trying their best to insure that development can take place without any major detriments to the fragile and not yet well understood northern environment. A recent internal Environment Canada report, for example, has reported high concentrations of trace elements in fish and wildlife near the Nanisivik lead-zinc mine on northern Baffin Island. This finding defied predictions of experts and has shaken both government officials and local residents. The indication, however, is clear that the northern environment is not yet understood well enough to insure the non-disruption of the arctic ecosystem in the face of large-scale development.

Aboriginal Rights: The Case of Baker Lake

Another, well-publicized court case occured in 1979 when the Inuit residents of Baker Lake took the government to court to protect their land from mining companies operating in the area and to clarify the issue of aboriginal rights. By the late 60's, the Inuit of the area expressed increasing concern that mineral exploration activities were having a negative impact upon the local caribou population such that caribou calving areas and migration routes were being disrupted, resulting in a significant decline in the numbers of caribou that local hunters were bringing back to the community.

In April of 1974, the Baker Lake Inuit submitted a formal petition to the federal and territorial governments requesting a freeze on new mining activities in the area. When this petition was turned down, the residents of Baker Lake went to Inuit Tapirisat for assistance. A new petition submitted by ITC in 1975 was also turned down by the Department of Indian Affairs and Northern Development. After a number of Cabinet shuffles, a one year freeze was finally accepted in 1977. Reaction from the mining companies was, as expected, extremely critical and increased pressure was exerted by the industry upon the new minister of Indian and Northern Affairs. The mining companies complained that exploration activities were having no impact upon the caribou population and if anyone was responsible for the reduction in the caribou population, it was the Inuit themselves from overhunting. This observation was supported by a number of government wildlife biologists, leading to pronounced hostilities between biologists and the Inuit. The net result of the mining industry's lobbying efforts was that the land freeze was not renewed in its previous form. The government would continue to issue new mining permits while imposing seasonal controls on mining activities which would potentially affect the caribou populations in certain designated areas.

The Inuit residents of Baker Lake were outraged at this decision and decided to take the government of Canada and the six mining companies working in the area to court. One hundred residents of Baker Lake joined the Baker Lake Hunters and Trappers Association, and ITC as plaintiffs. The court case which followed was the first to discuss the issue of aboriginal rights in the N.W.T. On April 18,1978, an interim injunction was granted to the plaintiffs for a land freeze pending the outcome of the court trial which commenced in the spring of 1979.

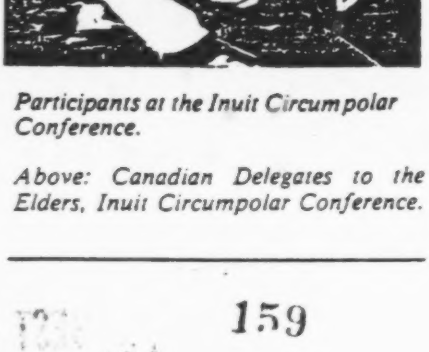
Lawyers for the Inuit based their argu-

Photos by Bill Hess and The Tundra Times

ment upon the concept of "aboriginal rights" which gave the Inuit certain rights to the land which they had occupied for hundreds of years. Because of these rights, the government was not justified in abrogating them by issuing mining permits which the Inuit looked upon as an incursion upon these rights. Lawyers for the defense, representing the government and the six mining companies, took four interesting lines of defense:

1)The first line of defense was that the Inuit had not occupied the Baker Lake area for any extensive period of time and therefore had no aboriginal claim based upon prolonged occupation. In response to this rather surprising claim, the Inuit found it necessary to retain expensive archeological witnesses to provide evidence of ancient Inuit presence in the area. This issue was finally resolved in favor of the Inuit.

2) The second line of defense asserted that the Inuit never had any title to the land to begin with, despite prolonged occupancy in the Baker Lake area. At one point, government and mining company lawyers argued that the Inuit had been too primitive and politically disorganized to have rights over the land. Since they had never been a sovereign and independent nation, they were not eligible for the same rights over the land as was the government of Canada. (It is interesting to note that very similar arguments were used by the United States Government to confiscate American Indian lands.) Fortunately for the Inuit, this second line of defense was refuted as well. The presiding judge concluded that "the aboriginal Inuit had an organized society. It was not a society with very elaborate institutions but it was a society organized to exploit the resources available on the barrens and essential to support human life there" (Herchmer 1980:5).

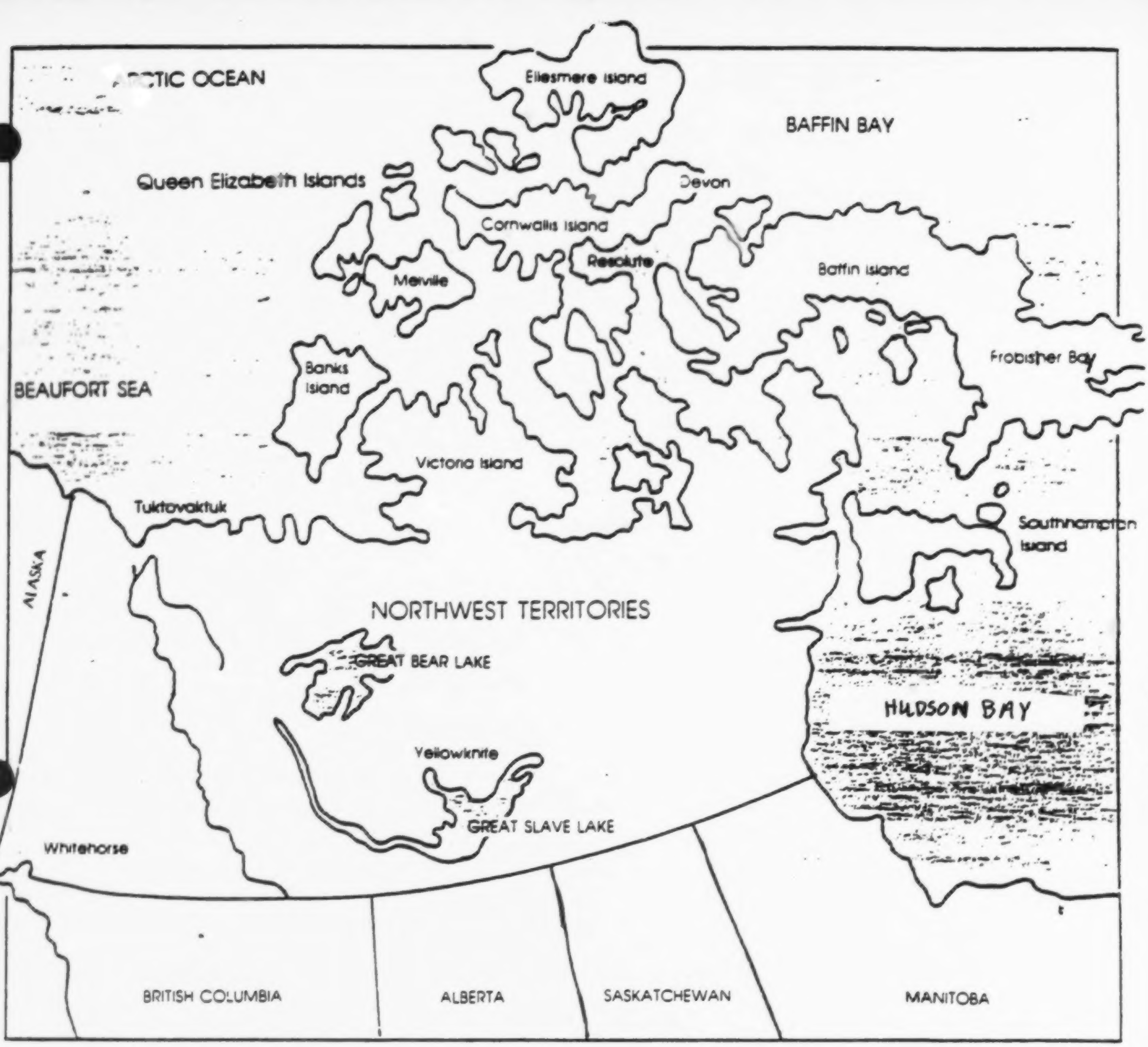


Participants at the Inuit Circumpolar Conference.

Above: Canadian Delegates to the Elders, Inuit Circumpolar Conference.

3) The third defense argument claimed that even if the Inuit did have rights to the land in the past, these were abolished by Charles II of England with the Hudson Bay Charter of 1670. (This refers to the charter issued by Charles II to his cousin, Prince Rupert of the Rhine, and a group of London investors who eventually established the Hudson's Bay Company. It gave exclusive trade and commerce rights to a 1,486,000 square mile area from Labrador to the Canadian Rockies. In 1870, The Hudson's Bay Company ceded Rupert's Land to Canada.)

4) The final line of defense asserted that even if those rights were not abolished in 1670, they had subsequently been abolished by the Canadian Government, either expressly or inadvertently (Herchmer, 1980:5).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GREAT BEAR LAKE
HUDSON BAY
Yellowknife
GREAT SLAVE LAKE
Whitehorse
BRITISH COLUMBIA
ALBERTA
SASKATCHEWAN
MANITOBA

The decision of the court trial was announced by the presiding judge, Mr. Justice Patrick Mahoney on November 15, 1979. In his decision, which concentrated upon the two final lines of defense, the justice ruled that aboriginal rights had not been extinguished by either the Hudson Bay Charter of 1670 or by the Federal Government of Canada. Nevertheless, these aboriginal rights were not property rights. While this did not give the Inuit of Baker Lake direct ownership over the land, it did provide them with the right to freely move about for hunting and fishing. In order for the Inuit to prove that these rights were being impinged upon, they would have to prove that mining activities were having a direct negative impact upon caribou herds. Despite the Inuit's presentation on volumes of written testimony regarding this negative impact, the judge ruled that there was not enough evidence to prove that mining activities were harrassing the caribou population.

Both sides of the debate considered the decision to be overly ambiguous. Inuit officials were pleased that aboriginal rights were recognized, but were disappointed that these did not include proprietary rights to the land. Representatives for the mining companies were also concerned since the exact nature of aboriginal title was not clearly enunciated, leading to uncertainty about how far a mining company could go before it impinged upon these aboriginal rights. Despite a motion requesting clarification of aboriginal rights, the justice refused on the grounds that his views had already been expressed.

The ambiguous outcome of the Baker Lake trial indicates the importance of settling the land claims issue. The decision made it plainly clear that aboriginal title, while recieving legal recognition, gives Inuit only an extremely tenuous right to use

(Continued on page 40)

CONTINUED

INUIT LAND CLAIMS

(cont. from pg. 18)

the land for traditional subsistence activities. This legal title, however, does not include ownership, and it is ownership which represents the most crucial and timely dimension of land claims negotiation.

The question of aboriginal rights has not been helped with the approval of Canada's new constitution in 1982. In this constitution, "existing aboriginal rights" are recognized, but no definition is included about what these rights might be. Presumably, the ambiguous term "existing aboriginal rights" refers to those which have been determined by the courts. As the final outcome of the Baker Lake trial indicates, such determinations are sufficiently vague to be of little use.

Aboriginal Rights and Land Claims: What the Future Holds

Government and industry development plans will undoubtedly continue in the North. Given the world demand for mineral, gas, and oil resources, more and more of these projects will be realized in the coming decades. For example, the specter of the Mackenzie Valley Pipeline has risen again with Ottawa's approval of the 866 kilometer Northern Wells Pipeline to pipe oil from the Central Mackenzie Valley to Alberta. This pipeline represents the southern half of the original Mackenzie Valley Pipeline proposed in the early 70s. Many native groups fear that there are impending plans to extend it northward into the Mackenzie Delta.

Government and industry attitudes towards northern economic development assume that it is possible to proceed with industrialization of the north at the same time that land claims negotiations are underway. This sentiment is not shared by native organizations, which fear that development programs simply function to erode an already tenuous political power base. In some respects, the ambiguity of the present land claims process is to the distinct advantage of government and industry since it is able to proceed with many of the same projects which the Inuit would like to see a moratorium placed upon. Such a strategy makes perfect sense given the government's policy that already developed lands are no longer negotiable. The current situation in the N.W.T. is radically different from the situation over a decade ago in Alaska where there was a total suspension of development projects until land claims were finally resolved. From the perspective of many politically sophisticated Canadian Inuit, the government is throwing them a "curve ball".

Because the issues of land claims and aboriginal rights have not yet been resolved for any other area of northern Canada other than Quebec, the Inuit of the Canadian Arctic must maintain an ever watchful eye on various industry and government proposals which may have a significant impact upon the northern environment and native lifestyles. Never before has there been such pressing need for well-educated and politically-active Inuit to represent the best interests of Inuit communities. For many in these communities, the processes of land claims negotiations, industrial development, government hearings, and legal battles are foreign and largely incomprehensible processes. Despite their incomprehension, most realize that these government and industry development plans represent a significant threat to a way of life which, up until now, has persisted for thousands of years. ■

INDIAN SELF RULE

(cont. from pg. 27)

The Menominee Indians trust relationship with the federal government was terminated in a 7 year process beginning in 1954. Tribal land and assets were turned over to a state chartered corporation, called Menominee Enterprises Inc. The ultimate result was the loss of thousands of acres of tribal lands, a threat of bankruptcy of the tribe's only successful business and the loss of the tribally-owned timber resources.

Ada Deer, a Menominee who led her tribe's fight for restoration, says "most Native people do not understand the operations of a corporation, it is very easy for a board of directors and others to manipulate and exploit the majority of Native people." She warns Alaska Natives to wake up to this fact, or "we will see a great disaster happening in Alaska in 1991."

Charles Wilkonsin was the lawyer for the Menominees during the restoration movement. Under restoration, the special trust relationship between the Menominees and federal government was re-established. He says "there are many elements of ANCSA which closely parallel termination." He believes the IRA movement in Alaska is healthy. He says the right of self government is an inherent right of America's indigenous people, and in light of ANCSA, the IRA is

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Land Claims & Political Development — The Case of the Dene

While the Dene have been unable to settle their land claims with the Canadian government, development continues on this land by outsiders.

Shepard Krech II

In 1977, following extensive hearings in the Canadian Northwest Territories (NWT), Mr. Justice Thomas Berger released his *Report of the Mackenzie Valley Pipeline Inquiry*. Directed by the government of Canada to investigate the impact of proposals to build a gas pipeline through the Mackenzie River valley, Berger recommended a 10-year moratorium on these projects, which should then proceed only if Dene land claims were resolved.[1]

One of the communities visited by Berger was Fort McPherson, where he heard from many Loucheux and Metis. Johnny Charlie, Chief of the Band Council, spoke of depending on the land for hunting, fishing, and trapping. He insisted upon the importance of maintaining land and resources for future generations, and he described the damage already done by seismic crews, construction activity, oil companies, and alcohol abuse.

Many echoed Johnny Charlie's thoughts, speaking of the need to consult with native people and of their dependence on the land. John Blake pointedly questioned pipeline company officials on inconsistencies in their statements. Phillip Blake spoke eloquently and at length on inequities in housing; on school as a "symbol of white domination" and as "set up to destroy Indian culture and . . . our pride in our Indian heritage;" and about having "no choice" except to react with violence should the pipeline be "impose[d] . . . against our will." Johnny Kay, the interpreter for and a signer of Treaty 11 in 1921, testified that the Loucheux regarded this agreement as a peace treaty, not as a nullification of their land title.[2]

Berger's controversial decision was monumental. He argued that the land-based native economy and the replacement value of products obtained from the land were far more significant and greater than formerly, respectively, thought; that southern, not northern, Canadians would benefit economically from a pipeline while natives would bear the brunt of adverse social effects; and that land claims must be settled before any pipeline is built.[3]

Since the Berger inquiry, three important things have happened: (1) the Dene declared their identity as a nation and have pressed for a settlement of their land claims that would involve the creation of a territory called Denendeh; (2) the 10-year moratorium insisted on by Berger has not been honored; and (3) the Inuvialuit of the Mackenzie Delta region, represented by the Committee for Original People's Entitlement (COPE), have settled their land claim. Dene actions, today, can be understood only in the context of these three events.

The Dene Declaration and Denendeh

In 1974, the Indian Brotherhood of the Northwest Territories (IBNWT) and the Metis Association of the Northwest Territories (MANWT) declared ownership of 450,000 square miles of NWT and rejected the notion that they should surrender their land — or that they ever had — for compensation. In 1975, IBNWT issued, on their own and MANWT's behalf, the Dene Declaration, in which they asserted that they were a "nation" (by which they meant a group of people sharing culture, history, and related languages) and that they were entitled to self-determination. Over the next two years this basic proposal was modified, and the Dene insisted on a special status, with their own government, within the Canadian Confederation. The major reaction of the Canadian government was that legislative or executive powers could not be granted on the basis of race.

After splitting off and presenting its own claim for economic development, MANWT in 1979 rejoined the Dene, who the year before had formally become the Dene Nation (DN). DN subsequently began to negotiate for both organizations.

In 1981 pressure was mounting to exploit oil reserves at Norman Wells on the Mackenzie River, and the Department of Indian Affairs and Northern Development (DIAND) became actively interested again in negotiations as it had before when the exploitation of non-renewable resources was a possibility. DN presented (for themselves and MANWT) to DIAND the proposal for Denendeh, which in Dene means "the land of the people." Denedeh was conceptualized as a jurisdiction of 650,000 square miles — roughly the western half of NWT — with province-like powers, that would respect the pluralistic traditions and cultures of Dene, Metis, and whites. The proposal also called for: exclusive Dene ownership of a large amount of land and resources and control of hunting and fishing rights; native languages, alongside English, as official; development contingent upon the enhancement of Dene well-being; a 10-year residence requirement to vote; and shared power with the federal government to tax.[4]

Until recently there has not been any progress on negotiating the Denendeh proposal. In part, this is because of divisions within DN and MANWT over who would be eligible for a land claims settlement.[5] But the major inhibitor of progress has been the steadfast refusal of the Canadian government to negotiate political rights in the context of land claims; its stated preference is for an exchange of aboriginal title for benefits. DN leaders may be reaching the point where they understand fully the intransigence of this position. Moreover, the Dene are under mounting pressure again from the exploitation of oil as well as from the completed negotiations with the Inuvialuit.

Failure to Honor 10-Year Moratorium

In 1981, Interprovincial Pipe Line received permission, in complete violation of the spirit of the Berger Report, to build a $1 billion, 868-kilometer oil pipeline from Norman Wells to Alberta. DN and MANWT protested and delayed the project for two years. But in February 1984 construction crews were burying the line through which oil will flow from a mid-river field that Esso is tapping.

Dene say that they have not benefitted from this activity. Workers come from southern Canada for three-week shifts, then are flown out for one week off. Some Dene were told that they could not work because they were not union members. Federal funds promised to the Dene for job training and environmental monitoring have been delayed.

On the other hand, the Dene and Metis are involved, with federal support, in this activity in an unprecedented way: they formed, with Esso as a possibly-temporary partner, a joint venture to own and operate a drilling rig at Norman Wells. Still, the pipeline undermines Dene bargaining power on aboriginal rights and complicates their claims process. Steve Kakfwi, DN President, has called for an assessment before any similar project is started.[6]

There is, however, a good chance that another pipeline will be approved before an assessment of Norman Wells is made. In June 1984, Polar Gas applied to build a natural gas pipeline to Alberta from the Mackenzie Delta. An oil pipeline from the Delta is also under consideration. An environmental assessment panel is ready to declare that DN and MANWT objections to the oil companies' environmental impact statements have been answered. Yet, at hearings in the fall of 1983, Fred Greenland, Chief of the Aklavik Dene Band, spoke of the lack of jobs, of disillusionment, and of Dene not benefitting from development. The most staggering report came in November 1983 from Tuktoyaktuk in the Mackenzie Delta: since January, over 35 people in a population of 750 tried to commit suicide; 7 succeeded.[7]

The COPE Agreement

The agreement in early 1984 between the government of Canada and COPE, representing the Inuvialuit of the Mackenzie Delta region, may well have an effect on the progress of Dene land claims. In June 1984, the Inuvialuit ratified overwhelmingly the settlement negotiated by COPE. In exchange for agreeing to surrender their aboriginal rights to their traditional lands, 2500 Inuvialuit in six communities will receive $45 million in 1977 dollars, to be paid over a twenty-year period to an Inuvialuit Regional Corporation; full surface and subsurface title to 11,000 square kilometers and title (excluding oil, gas, and mineral rights) to another 78,000 square kilometers; and a significant role in wildlife and land management decisions.

Other native organizations were in the past highly critical of COPE's prospective settlement. The most serious objection has been to COPE's agreement to, in effect, extinguish aboriginal title to land. DN opposes extinguishment and has been uncomfortably aware of the close parallels between the COPE and the 1975 James Bay agreements and of the government's insistence on negotiating only agreements like these. Furthermore, both DN and national native organizations are fearful that an agreement in which aboriginal title is extinguished will affect negotiations currently underway to entrench aboriginal rights in the Canadian Constitution. For the Inuvialuit, the agreement means some security for hunting and fishing rights in the face of Beaufort Sea and Mackenzie Delta oil and gas development. COPE, choosing what appeared to them to be the most pragmatic route, and choosing to trust the constitutional process to resolve larger questions of aboriginal rights, insists that it negotiated what the Inuvialuit wanted.[8]

• • •

Political currents swirling in NWT today will have a great impact on the negotiation of Dene claims. In the mid 1970s, native leaders boycotted participation in the NWT government, feeling that it was compromising and contradictory to participate in a structure which was an integral part of the government against which they were claiming aboriginal rights. Since 1979, NWT native leaders ended their boycott and have started to take advantage of the native majority in NWT. This has not been easy. NWT is a federal jurisdiction; traditionally, the NWT government has been weak and derivative. Despite the continuing derivative nature of the NWT government and continuing conflicts of interest, the most intriguing potential for reaching Dene goals is in synergy between native claims and the development of provincial-like powers in NWT. Impetus for this has come in part from Inuit in the eastern Arctic, who seek to create in NWT what they call Nunavut.

Nunavut, "our land" in Inuktitut, is the proposal of the Inuit Tapirisat of Canada (ITC) to create a territory north of the treeline in NWT, where Inuit are three-quarters of the residents. In its 1977 form, the idea for Nunavut resembled the Dene Declaration and later Dene proposals — a new territory within federation was insisted on in the context of a land claims settlement and there was a residence requirement of three years to vote. Superficially, Nunavut struck a responsive chord: in 1963, there had been non-partisan support in the House of Commons for the creation of a similar entity (as a territory), and today an MP represents a region that corresponds basically to Nunavut.

In 1982, the native-controlled NWT Council endorsed the division of NWT into two parts. Division would give the Inuit more control over Nunavut than anyone outside the federal government now has; it would also lead to the creation of a western territory.[9]

The federal government approved division in principle, provided that a boundary could be agreed to. Discussions over a boundary are unfolding in two forums of the NWT Constitutional Alliance: the Western Constitutional Forum (WCF) and the Nunavut Constitutional Forum (NCF). WCF, supported by DN and MANWT, prefers a boundary on a north-south axis beyond the treeline that would bring Inuvialuit communities and resources and most of the NWT mines in-

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to their fold, even though the Inuvialuit are cool to the idea. NCF prefers a treeline boundary but states that it will defer to the wishes of the communities involved. Leaders of both forums and of native organizations are apparently willing to compromise. Significantly, Steve Kakfwi, a member of WCF as well as DN President, favors Denendeh as the name for the future though still far from definite Western territory. Moreover, while Kakfwi is opposed to extinghishment of aboriginal title, he is open to entrenching aboriginal rights in the Canadian constitution.[10]

Dene self-government may well develop, it seems, in the context of political development in NWT. The federal government may discover that it is less and less able to manage the increasingly assertive native-controlled NWT Council which is quickly learning how to use the rules to its advantage. For the first time, the head of the executive committee of the NWT Council is a Native: Richard Nerysoo, a Loucheux, from Fort McPherson, who supports the COPE Agreement, Provincial status for NWT, and small-scale pipelines.

Today, more than ever before, it is possible that Denendeh and Nunavut territories may be created, and that the Dene-Metis and Inuit majorities in each may achieve some measure of self-government. With this change, a resolution of land claims becomes possible. ☐

Shepard Krech III is Research Associate, Department of Anthropology, American Museum of Natural History and a member of the Anthropology faculty at George Mason University. This article was prepared with the aid of a Canadian Embassy Faculty Enrichment Grant; the assistance of Project North and the Dene Nation in providing materials is gratefully acknowleged. Opinions are the author's alone.

Footnotes

1. Mr. Justice Thomas R. Berger (1977) *Northern Frontier Northern Homeland: The Report of the Mackenzie Valley Pipeline Inquiry.* Vol I. Toronto: James Lorimer & Co. The Berger Inquiry was indeed extensive, listening to over 1500 people both in formal hearings and in 35 northern communities, and basing recommendations on over 40,000 pages of testimony.

2. The quotes in the preceding two paragraphs are from the *Proceedings at Community Hearings*, vols. 11, 12, and 13, 8-10 July 1975. What Berger heard at Fort McPherson did not differ substantially from testimony presented throughout the Northwest Territories. The Loucheux — as they call themselves — are better known to anthropologists as the Kutchin. Additional excerpts from the community and formal hearings may be found in Martin O'Malley (1976), *The Past and Future Land.* Toronto; and Mel Watkins, ed. (1977) *Dene Nation: The Colony Within.* Toronto: University of Toronto Press. On the signing of Treaty II and the 1973 hearings that concluded that oral and written versions of the treaty differed, see Rene Fumoleau (1975) *As Long As This Land Shall Last.* Toronto, McClelland & Stewart.

3. For some idea of immediate reactions, both positive and negative, to the Berger Report, see W.H. McConnell (1978a), "The Report of the Mackenzie Valley Pipeline Inquiry, Volume One: Summary and Critique of the Final Two Chapters and Epilogue," *Musk-Ox* 21:18-25; W.H. McConnell (1978b), "The Report of the Mackenzie Valley Pipeline Inquiry, Volume Two: A Critique," *Musk-Ox* 21:26-27; J.C. Stabler (1977), "The Report of the Mackenzie Valley Pipeline Inquiry, Volume 1: A Socio-Economic Critique," *Musk-Ox* 20:57-65; Mel Watkins (1977), "Aboriginal People and Staple Production: A Commentary on the Berger Report," *Western Canadian Journal of Anthropology* 7(3):83-94. For a recent assessment, see Michael I. Asch (1982), "Capital and Economic Development: A Critical Appraisal of the Recommendations of the Mackenzie Valley Pipeline Commission," *Culture* 2(3):3-9.

4. The main sources for the preceding several paragraphs are: Lloyd Barber (1976), "Indian Land Claims and Rights," pp. 65-80, in *Les Facettes de L'identide Amerindienne*, M-A. Tremblay (ed.), Laval University Press; Keith Crowe (1979), "A Summary of Northern Native Claims in Canada: The Process and Progress of Negotiations," *Etudes/Inuit/Studies*, 3(1):31-39; Gurston Dacks (1979), "Northern Native Claims: Will Ottawa Default?", *Canadian Forum*, March 1979:6-10; *Dene National Annual Report 1983;* Peter Jull (1982), "Nunavut," *Northern Perspectives* 10(2); Douglas Sanders (1977), " 'Equality' and 'Special Status': Native Policy in the Northwest Territories," pp. 195-202 in *Processings Northern Population Workshop I*, ed. by P.W. Wells, North Hatley, Quebec.

5. This was being settled in a vote in June, 1984 (see *Dene Nation Newsletter*, 3 March 1983; *Metis Newsletter*, 15 February 1983; *Native Press*, 23 December 1983, 19 April 1984, 4 May 1984, 15 June 1984).

6. Robert M. Bone and Robert J. Mahnic (1984), "Norman Wells: The Oil Center of the Northwest Territories," *Arctic* 37:53-60; *Dene Nation Annual Report 1983; Dene Nation Newsletter*, 3 March 1983, 15 June 1984; *Globe and Mail*, 17 September 1983, 10 February 1984; *Native Press*, 23 September 1983, 3 March 1984, 4 May 1984, 15 June 1984; *Northern Perspectives* 11(4), July-August 1983.

7. These boom-town pressures at Tuktoyaktuk are truly staggering. Natives who "work for oil" like their long shifts and extra money but seem to pay the price, in that no one is left at home to look after adolescents, who have money and time to kill. *Globe and Mail*, 17 September 1983, 21 November 1983, 10 February 1984, 1 June 1984, 19 June 1984; *Metis Newsletter*, 15 February 1983; *Native Press*, 9 September 1983, 23 September 1983, 15 June 1984; *Northern Perspectives*, 8(6) 1980, 11(3) 1983, 12(1) January-February 1984.

8. The Inuvialuit Regional Corporation will be administered by six non-profit Inuvialuit Community Corporations that will decide how to allocate funds or whether to make per capita distributions; there will also be a $10 million economic enhancement fund and a $7.5 million social development fund. COPE was opposed by a minority Inuvialuit Action Group: businessmen who preferred more cash and more immediate per capita distributions from an interest-bearing trust fund. Dacks (1979), *Globe and Mail*, 4, 8, 10, 28 February 1984, 1 May 1984, 1 June 1984; *Native Press*, 13 January 1984, 10 February 1984, 24 February 1984, 4 May 1984, 15 June 1984; *Project North Journal*, 8(1) Winter 1984.

Another claim may affect the Dene: that of the Council of Yukon Indians, which is close to settlement but arguing over the term "extinguishment." Barber (1976); Peter A. Cumming (1977), "Canada: Native Land Rights and Northern Development," IWGIA No. 26, Copenhagen; Crowe (1979); *Globe and Mail*, 16 November 1983, 27 January 1984, 8 February 1984, 18 April 1984; *Northern Perspectives*, 12(1) January-February 1984.

9. Ian Creery (1983), *The Inuit (Eskimo) of Canada.* MRG Report No. 60; Crowe (1979); Cumming (1977); Jull (1982); *Globe and Mail*, 4, 8 October 1983, 3, 16 May 1984.

10. *Dene Nation Newsletter*, 4 May 1984, 15 June 1984; *Globe and Mail* 4 April 1984, 3 May 1984; *Metis Newsletter*, 15 February 1983, 4 May 1984; *Native Press*, 3 March 1984, 19 April 1984, 4 May 1984, 15 June 1984.

11. *Globe and Mail*, 17 September 1983, 21 November 1983, 12 and 17 January 1984, 28 February 1984, 16 May 1984, 15 June 1984; *Northern Perspectives* 11(4) July-August 1983.

Dene Nation Newsletter

Registration no. 5123 Volume 4, Issue 1 January/February 1982

Maps to Show How We Use Our Land

Dene Leaders at Rae Lakes showing their favorite hunting and trapping places.
Photo by Helene Laraque

TRADITIONAL LAND USE MAPS RETURN TO THE COMMUNITIES

by *John McCullum*
Mapping Project Co-ordinator

Many people in the Dene communities were involved in a Land Use Research project set up by Dene Nation and ran from 1974 to 1976 and updated in 1980 and 1982. Fieldworkers gathered information from hunters and trappers about where they go to hunt, trap or fish; about the animals they caught; the years and seasons they went out, the way they travelled (for example by boat in summer, by ski-doo or dogs in winter) and put all this on maps as well as recording the stories on tape. The fieldworkers spent hours with each person, carefully making sure that every detail was recorded.

There was not very much money to do this, nor was there a lot of time. Since collecting this information is very long and slow as well as expensive, the fieldworkers only interviewed one out of every three hunters and trappers. Since most of the people who trap and hunt are out in the bush anyway, it's pretty hard to get them at home to interview.

Very few of the people who worked on these maps, either fieldworkers or those who were interviewed, have ever seen the final maps that came from all that work. But now the maps are ready and all the information has been stored in a computer.

Before we can be sure that the maps and biographies (from the tapes) are accurate we need the community people to tell us if the maps show all the places the Dene go. Since only one third of the hunters and trappers were interviewed there may have been areas of land that Dene use which are not on the maps.

When we know that all the information is there then we can confidently show them to government people during negotiations and say, "this is where the Dene have been, this is the land they use". These maps will also be published in a book so that people everywhere, Dene and non-Dene, old, young and future generations can all see where the Dene have lived.

In the next two to three weeks, we are going to send maps showing all the land use that we found for each community to the community so that the people there will be able to see their work and check it. These maps will be put together in a book form or atlas.

Each community will have to decide how it will check these maps. In Snowdrift last year, the people had a community meeting for the whole village. Each person had a chance to look at the maps they had made and decide if they were accurate. Finally they decided that the maps did show all the places where Snowdrift people go when they hunt, trap or fish.

In Fort McPherson, the community is hiring a researcher to go around visiting people with the maps and he will check them that way.

There are many ways to verify the information on the maps. The important thing is that everyone in the community see the map. Any person who hunts, traps or fishes in a place that is not shown on the map should speak up, show where he goes so that we can fix this up right now. This is extremely important.

These maps will be used for negotiations. Any place that is not shown on the map as a place that Dene go to hunt or trap will not be included in a land settlement. The government people will not even talk about land that is not shown on the maps.

So, it is very important for every hunter or trapper to be sure that all the places he goes and all the land his family has used are shown on these maps.

These maps will be coming to the communities very soon. How will the community you live in check them?

COPE Wins Massive Land Settlement

Historic Signing in Tuktoyaktuk

Letters from the Canadian government have been sent to land-lease holders in the Inuvialuit settlement region notifying them that their landlord is now the Inuvialuit Land Administration (ILA), not the federal government. The ILA was formed under the settlement to administer the 39,000 square miles the land granted to COPE.

This is the first and most important stage in the implementation of the Committee for Original Peoples' Entitlement (COPE) land claim passed by Parliament on 29 June 1984. Although the act is yet to be signed into law by Canadian Governor General Jean Sauve, the Department of Indian and Northern Affairs (DIAND) is already giving COPE powers over the land, which makes COPE the largest private landholder in Canada, and one of the largest in the world. The massive settlement has been compared to the British North American Act, which served as Canada's Constitution until the 1981 patriation.

As COPE helps set up forty new Inuvialuit organizations established by the Agreement, COPE itself as the land claims organization is being phased out. Within a year, COPE will cease to exist completely.

COPE Celebrates Historic Signing

On 5 June 1984, the passage of the settlement act was celebrated in northern style. In a ceremony before over 400 invited guests, Indian and Northern Affairs Minister John Munro and Committee for Original People's Entitlement (COPE) President Peter Green signed the final agreement on the Western Arctic claim, which had been 17 years in the making.

Mr. Munro told the gathering, "This is a proud day for Canada and for the Inuvialuit, whose culture and society enrich us all." Referring to the labors of chief COPE negotiator Bob Delury, Munro stated, "You have done a superb job," and went on to say that he himself was deeply honored to have had a part in achieving the settlement.

Peter Green said, "I am fortunate to be the spokesman for the collective effort of all the Inuvialuit and the people who have worked with us to achieve this signed final agreement. The Inuvialuit of the McKenzie delta and the Western Beaufort Sea are proud that our efforts to conclude our land claim successfully have been received so well by the people of Canada."

Inuvialuit drum dancers opened the ceremony at Tuktoyaktuk's beautiful and new Kitty Hall. The Inuvialuit are the first native group north of 60 degrees to reach final agreement on a comprehensive claim. The mood was one of excitement and happiness as one official after another stepped up to the platform to sign the agreement which was fifteen years in the making. Loud applause greeted the speeches and the signing, and many eyes were filled with tears. After the ceremony, COPE hosted a luncheon of char and roast caribou, while the dancing and celebration lasted all night.

Nellie Cournoyea, one of COPE's cofounders along with Sam Raddi, is now Minister of Renewable Resources and Information for the Government of the Northwest Territories (GNWT). She surprised and delighted those present by turning up in a white dress, one of the few times in which she has been seen in a dress at all. "I promised the negotiators a long time ago that I would wear a dress to the signing," she told the gathering with a laugh. "I learned a long time ago that you can't really boss people around unless you wear pants and are a little sweaty."

Agreement Terms

Under the agreement some 2,800 Inuvialuit beneficiaries will receive $45 million (Canadian) in 1977 dollars, in a series of payments to be made annually until 1997 (estimated total: $152 million). Within three months the federal government will also provide an economic enhancement fund of $10 million designed to help the Inuvialuit participate fully in the economy of the Western Arctic. To help the Inuvialuit to solve the problems which accompany social transition, a Social Development Fund of $7.7 million will also be established when the settlement legislation is enacted to help the Inuvialuit find their own solutions to community problems including those of health, language, traditional lifestyles, and the elderly.

As another element in the settlement, the beneficiaries will receive title to over 35,000 square miles of land within the

Continued next page

Inuvialuit

DIAND Minister John Munro, left, shakes hands with COPE President Peter Green at the signing of the Final Agreement, June 1984, as Master of Ceremonies Les Carpenter of Sachs Harbor looks on.

168,000 square miles they traditionally used and occupied. They will own both surface and subsurface rights to almost 5,000 square miles. On the remaining Inuvialuit settlement land, they will own subsurface rights to sand, rock, and gravel but not oil, gas, or minerals. Approximately 633 square miles of the land in Cape Bathurst will be held as a protected, non-development area.

The agreement grants the Inuvialuit certain preferential and exclusive rights to harvest wildlife in the settlement region, including marine mammals and fish in the adjacent waters. Other provisions will assist in incorporating the Inuvialuit into wildlife management. The North Slope of the Yukon will fall under a special management regime established by the agreement, including the establishment of a National Park in the area from the Babbage River west and a Territorial Park on Herschel Island.

Responsibility for receiving and managing the Inuvialuit settlement compensation and benefits will rest in a group of corporations owned and controlled by the beneficiaries. Six non-profit Inuvialuit community corporations will be established, each one to be controlled by the beneficiaries in the community it represents.

Together, they will control the Inuvialuit Regional Corporation (IRC), which initially will receive the settlement lands and financial compensation. The IRC will transfer these benefits to the Inuvialuit Land Corporation, the Inuvialuit Development Corporation, and the Inuvialuit Investment Corporation. An Inuvialuit Trust will own 100% of the the non-voting preferred shares in the land, development, and investments corporations on behalf of the IRC and eligible beneficiaries, while the IRC will hold 100% of the common shares. The trust will keep records of the beneficiaries — based on the membership lists provided by the Community Corporations. The Trust will give trust certificate to each person designated as Inuvialuit by blood, adoption, or other entitlement at the age of 18 for lifetime only. Through the Inuvialuit Trust, distributions to individuals can be made at the option of the IRC. These provisions thereby meet two Inuvialuit priorities: control of resources by community groups and equality of benefits for all qualified Inuvialuit, no matter where they live.

The Final Agreement disturbs none of the citizenship rights of the Inuvialuit or the protections enjoyed by other Canadian indigenous groups. The rights designated in the Agreement are protected by the Constitution as the Aboriginal rights of the Inuvialuit.

COPE History

COPE's roots are found in a Canadian Government policy announced in 1973 to settle native land claims — a policy that arose in large part from Judge Thomas Berger's work on a legal case involving the British Columbia Nishga tribe, which established the land property rights of Canada's indigenous peoples. The policy further stated that natives had the right to maintain their way of life and take an active and significant part in the development of their lands.

In 1976, the *Nunavut* proposal was presented, calling for a political division for all the Inuit of the Northwest Territories and the Yukon. To support their claim, the Inuvialuit of the Western Arctic participated in a study that they had traditionally used and occupied an area of 168,000 square miles in the Yukon and the N.W.T. That use and occupancy was documented by Canada and the Inuit Tapirisat of Canada in *The Inuit Land Use and Occupancy Study*.

In the summer of 1976, it looked as if the Mackenzie Valley Pipeline would soon go ahead. Alaskans had warned the Inuvialuit that unless land claims were settled before the pipeline was finished, it would be very hard to control development.

In the fall of that year, the Inuit of the Central and Eastern Arctic wanted more time to study the *Nunavut* proposal and withdrew it. COPE began its own separate regional land claim with a proposal called the *Inuvialuit Nunangat*, which was presented to the government in 1977. That proposal started negotiations which led to the signing of an Agreement in Principle in Sachs Harbor in 1978 by then COPE president Sam Raddi and then DIAND minister Hugh Faulkner. A federal election and Joe Clark's 1979 Conservative government intervened for nine months as government failed even to appoint negotiators. Stalling and posturing on both sides of the bargaining table further delayed serious negotiations for another year. The Final Agreement was approved by the Cabinet in March 1984 and approved in May by vote of the com-

Continued on page 8

Left, COPE negotiator Renie Arey signs the Final Agreement as Mona Felix serves as witness. Right, Nellie Cournoyea cheers the signing and gets a hug from Dennis Patterson.

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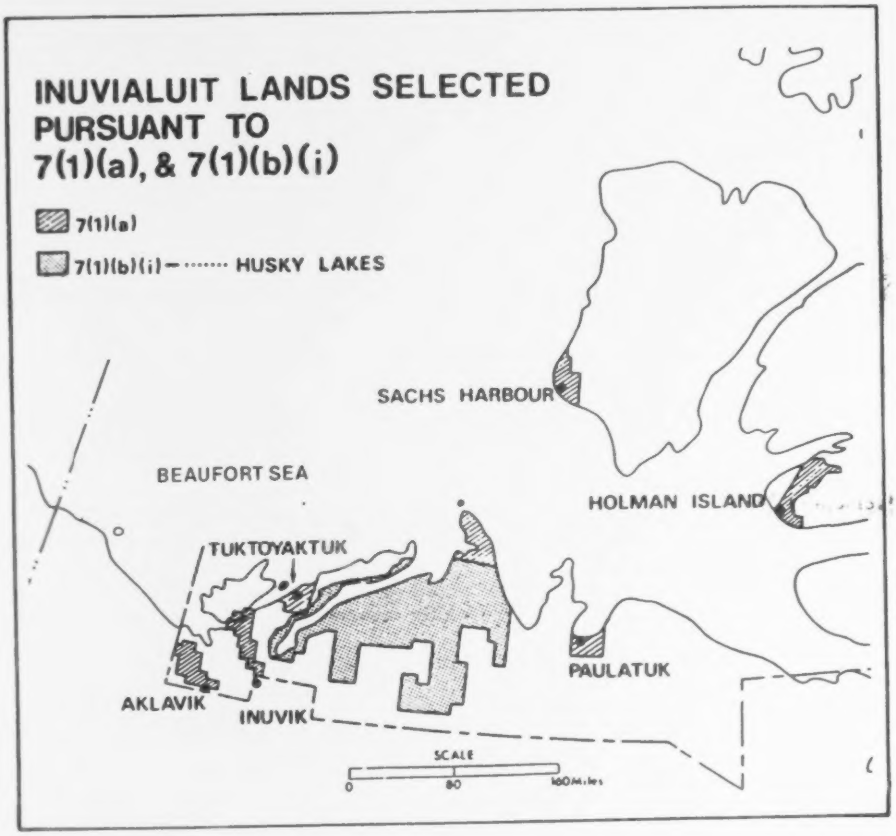
The COPE Claim in Summary



Land: Inuvialuit will receive 11,000 square kilometres of land around the six Beaufort-Delta communities and 2,000 square kilometres on Cape Bathurst (see map). They will have full surface and subsurface rights to this 7-1(A) land. This is essentially the same as negotiated in 1977.

Inuvialuit will also receive surface title to 78,000 square kilometres of class 7-1(B) land in the Mackenzie Delta and Beaufort area. This excludes rights to oil, gas and mineral rights but includes rights to sand and gravel deposits. The original '77 agreement gave the Inuvialuit 83,000 square kilometres.

Money and Compensation: Inuvialuit will receive $45 million in 1977 dollars which will go to a Inuvialuit corporation set up to manage the land and money. This $45 million will be worth $152 million by the time the last payment to Inuvialuit is made in 1997. The $152 million includes accumulated interest and payments will be made annually beginning after Parliament passes the final agreement into law. The $45 million is the same figure which had been agreed upon in 1977. COPE will have to repay the advances on land claims negotiations from the first payments.

The payments will not be taxed, but the various Inuvialuit corporations doing business or investing with the land claims money will have to pay tax.

Social Development Fund: The Inuvialuit will receive $7.5 million for a special fund which will help the elderly, resolve social and health problems, improve housing, education, and maintain the Inuvialuit culture. Payments of a half million dollars a year will be made to this fund beginning when the final agreement becomes law.

This was an element of the 1977 agreement and remains unchanged.

Economic Fund: The Inuvialuit will get $10 million to assist and develop Inuvialuit-based industries and businesses. This is a new provision which didn't exist in the 1977 agreement. This was put in because the ten percent preference clause for Inuvialuit businesses was withdrawn after protest from the Canadian business community.

The agreement also contains measures to give government priority to purchases of products and services from the Inuvialuit.

Yukon North Slope: A national park will be established on Yukon's North Slope west of the Babbage River. Herschel Island will become a territorial park. The North Slope east of the Babbage will be subject to a land use planning process that has Inuvialuit involvement. But controlled development would be permitted here.

Development will be permitted at Pauline Cove on Herschel Island and at Stokes Point in the proposed National Park but under strict terms and conditions.

Wildlife Management: Inuvialuit will have exclusive harvesting rights to their own land and preferential rights to other land within the settlement region. They will also retain exclusive harvesting rights to all game in the North Slope park and on Herschel Island. They will have preferential rights for wildlife harvesting on Yukon's North Slope between the park and the N.W.T. boundary subject to conservation measures. Other Native people who have trap lines in these areas will not be affected by the settlement.

The Inuvialuit will also participate in overall game management in the Western Arctic region through a variety of boards and councils.

Land Use Planning: The federal-territorial land-use planning regime for the N.W.T. will be extended to the COPE settlement region. But, the Inuvialuit will comprise one-half of the board members who will coordinate land use planning for the Delta-Beaufort region.

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BEST COPY AVAILABLE

COPE settlement landmarks: top, then COPE President Sam Raddi (standing behind desk) at the presentation of Inuvialuit Nunangat *proposal in Ottawa, 1977.*

Middle, left to right, negotiator Andy Carpenter, Sam Raddi, chief negotiator Bob Delury, and interpreter Rosie Albert at the signing of the Agreement in Principle at Sachs Harbor, October 1978.

Bottom, Peter Green (now COPE President) and negotiator Nellie Cournoyea (now Member of the Legislative Assembly for Nunakput) at the signing of the Agreement in Principle in 1978.

Photos: Inuvialuit

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munities of the settlement region (Aklavik, Paulatuk, Inuvik, Tuktoyaktuk, Sachs Harbor, and Holman Island).

Agreement Details: Land Ownership

In the earliest days of the negotiations, fieldworkers went from house to house in each community asking people what they wanted to see in a settlement. From this it became clear that the Inuvialuit agreed on three things: they wanted the land protected; they wanted the wildlife protected; and they wanted more control over the decisions affecting their lives and their children's lives.

Land ownership, hunting, fishing, and trapping rights, and control of their own business affairs were seen as central to a settlement. Finally, financial compensation was asked for lands and resources within their settlement lands which they will not own themselves.

Under the Final Agreement, there are two kinds of lands which will be owned by the Inuvialuit, named after the sections of the Agreement where they are discussed: 7-1(A) lands and 7-1(B) lands.

The 7-1(A) lands total 5,000 square miles and include all surface and subsurface mineral rights. In the remaining 30,000 square miles, 7-1(B) Lands, the Inuvialuit have title to surface rights and the subsurface rights to everything except oil, gas, and minerals, which are retained by the government. Although the Inuvialuit will own the land under rivers and lakes, Canada retains ownership and management of the waters in the Settlement Region.

The land within the Region not owned by the Inuvialuit are retained by the government. The Inuvialuit lands were chosen not because of proven oil or gas reserves, but because of their importance for hunting, trapping, fishing, and other traditional reasons. Improvements on the lands and profits made from it will be subject to tax. None of the lands may be sold except to other Inuvialuit or to the government.

Development Provisions — Participation Agreements

Individuals can use and cross Inuvialuit lands for casual recreation without permission unless problems arise. Commercial users must negotiate arrangements with the Inuvialuit before entering these lands. Inuvialuit participation in development on their own lands is guaranteed with a provision for Participation Agreements to be negotiated between the Inuvialuit and developer-applicants. Negotiations will cover such things as contracts, business shares, education, job training and preference, service contracts, environment restoration, and compensation to hunters, trappers, and other harvesters for losses suffered as the result of development activities

The compensation provisions require that the developer must first repair the damage and restore the wildlife to the original condition. Secondly, if the damage done to wildlife cannot be restored and the Inuvialuit cannot get th[illegible] wildlife they depend on, the developer [illegible] required to provide suitable substitutes as compensation. This could include, for example, transporting hunters to more distant areas where wildlife is available or offering cash substitutes for wildlife. In default of compensation by the developer, the Federal Government is required to compensate.

On Crown Lands within the Settlement Region — not covered by Participation Agreements — development programs must first be cleared by a Screening Committee. Upon approval by the Committee, the program is then submitted to a public review process. The Review Committee can then decide about whether or not to proceed with the program and about what conditions are to be imposed upon it. The Review Committee can also recommend terms and conditions pertaining to the wildlife compensation provisions of the Agreement.

Half of the representatives on the Screening and Review Committees will be Inuvialuit.

The Inuvialuit will also form half of the membership of two groups which will coordinate land-use planning in the Settlement Region.

The Yukon North Slope

The whole Yukon North Slope has been given special protections.

Wildlife, habitat, and traditional native use will be the main purpose for the area. West of the Babbage River, a National Park will be established in which no development will be permitted.

Herschel Island will become a park administered by the Yukon Government. Controlled development will be allowed east of the Babbage River, but it will have to go through the Land Use Planning and Conservation Planning processes. Development at Pauline Cove and Stokes Point will be allowed if strict conditions are met.

Inuvialuit Harvesting Rights

Two kinds of harvesting rights set out in the Final Agreement.

Exclusive harvesting rights allow only Inuvialuit or those permitted by the Inuvialuit to harvest an area. *Preferential* rights give the Inuvialuit first opportunity to harvest an area, and the first take of species needed for food and clothing.

The Inuvialuit will have exclusive rights to harvest all game on their own lands, in the National Park, in the Territorial Park, and on nearby islands. They also have exclusive rights to harvest black bear, grizzlies, polar bear, musk ox, and all other fur-bearers on Crown lands west of the Babbage River, with preferential rights to other subsistence species. On Crown Lands east of the Babbage River, they will have exclusive rights to polar bear and preferential rights to other species. Generally, they have preferential throughout the Region right to harvest all other species of wildlife except migratory non-game birds. The Inuvialuit have preferential rights to fish and marine mammals. If the market for seal skins returns, they will have preferential rights for commercial purposes.

A major provision of the agreement allows the Inuvialuit to trade, barter, and sell game and game products among themselves, a provision which is considered a major guarantee of the Agreement.

They also are guaranteed the rights to move game products back and forth between the Yukon and the NWT and to establish whatever camps are necessary for harvesting wildlife.

Participation in wildlife management is given to the Inuvialuit Game Council made up of representatives of the 6 community Hunters and Trappers Committees. Provision is also made for Inuvialuit participation in other fish and wildlife bodies established for research, management, and consultation.

Development Corporation Under Way

The $10 million in development funds will be delivered by the government next spring to the Inuvialuit Development Corporation (IDC) which had been started in 1978 as a result of the Agreement in Principle for the purpose of stimulating Inuvialuit economic development. At that time, the IDC was granted a $10 million advance. During this period, and until the provisions of the Final Agreement are implemented, the Inuvialuit are the shareholders of IDC, and COPE has held the shares in trust. Presently, each of the six communities are represented on the IDC Board of Directors, which is chaired by Randal Pokiak, an Inuvialuit from Tuktoyaktuk.

The IDC has involved itself in businesses which help to preserve traditional ways such as Country Foods, Arctic Guiding and Tourism, and other native-owned businesses. It also has invested in companies that provide vital services such as transportation, food, and hunters and trappers supplies. It currently has plans to engage in oil-and-gas-field support services and to develop management training programs.

Inuvialuit leaders feel that the 5-year lead time for the IDC has enabled it to hit the ground running, with recognition established within the Canadian business community. "By the time the claims are finalized, we hope to be moving at a real good pace," said Randal Pokiak in a recent interview in the COPE monthly newspaper, *Inuvialuit*. Talking about the uses to which the new grant will be used, Pokiak said that much will be spent on the development of renewable resources. "We find that government grants are too slow for what we are trying to do," he said. "We need to be able to get going without going through all that red tape." Other funds will be put into management training and development. Pokiak added, "Some of the money will be used to set up offices in different communities with a communications center so business can be done on a regular basis using teleconferencing. We saw this working in Alaska." As to how the IDC will respond to the unpredictable future of the Western Arctic oil and gas resources, Pokiak stated that they intend "to have a hand" in that, but at the same time are looking at investments outside the NWT and possibly even internationally.

Some of the funds will be spent on joint ventures as a means of helping local businesses to get started. "We will be taking advantage of any grants, loans, or other programs to assist people to start up business," Pokiak said, by helping individuals apply for such grants and loans.

"We're still interested in doing business with Alaska. With the oil and gas activity in both areas, if we could tap into it, it would help us bring our overhead costs down. While in Alaska recently, we have talked about two things — supplying Prudhoe Bay with fuel, and with groceries — and we're looking at costs right now. But we're not only looking at the oil companies but other communities, for example Barter Island, even Barrow. If it looks good we may be able to form some kind of agreement."

COPE Negotiator Bob Delury

No one knows better than COPE negotiator Robert Delury that the work of the settlement has only begun. Involved with COPE since its inception, Delury has a longevity rarely seen in a negotiator. A trained biologist, Delury went to work for the Inuit Tapirisat of Canada in 1973 to monitor development in the region. He

Continued next page

helped ITC formulate guidelines for environmental and development controls.

When COPE decided to go its own way in 1976 because of the rapid pace of development in its region, Delury was in charge of COPE's negotiation process.

Using a team of negotiators from each village, Delury hammered out the Agreement In Principle in two years. The draft final agreement was signed on 21 December of last year by Delury and federal negotiator Simon Reisman.

Because of the secrecy surrounding the final stages of the negotiations, Delury came under frequent criticism and political attack from inside and outside the Inuvialuit community. After the federal Cabinet had approved the Agreement on 28 March 1984, a protest group called the Inuvialuit Action Group called for a six-month delay in the village voting procedure. This request was flatly turned down by Delury and COPE president Peter Green. COPE campaigned for a high voter turnout at the poll and won. During the week-long poll in May, 77 percent of the eligible voters turned out, with 81 percent in favor of the settlement, giving COPE a strong mandate to proceed with the settlement.

Delury then moved to Ottawa where he worked furiously preparing the legal wording of the land claim for legislation before Parliament adjourned. His labors were rewarded when the law was passed handily the day before adjournment, 29 March.

A Working Settlement

Delury had set out to maximize Inuvialuit control and opportunity in their own land. "There is no concept of erecting barriers to people or investment in the region," he said in an interview in December when the draft Agreement was initialized.

"The Inuvialuit do not want to be isolationists. The stronger the Inuvialuit are, the more opportunities there will be for everyone.

The chief benefit of the claim is expected to be the same as in the case of the Alaska Native Claims Settlement Act: it will open up the Western Arctic for development. The barrier set up by Judge Berger in his Mackenzie Valley report of 1977 ("No development before native land claims are settled") is down.

"This is a working settlement, not a welfare handout," said Delury. "We don't expect the settlement to be perfect. It's as close to perfect as we can make it. It will provide the tool for Inuvialuit to take an active role in this region. The settlement will be judged on the people who use the tools, not the tool itself." After eight years of negotiating, Delury will return to his family and thriving scientific company in British Columbia, but he still will be involved with the implemenation of the Inuvialuit Final Agreement.

During the week of 7 August 1984, Larry Osgood, the Coordinator of the Inuvialuktun Language Project, was attending the North Slope Borough's Elders' Conference in Barrow, Alaska. While there, he was invited by Judge Berger to address the Alaska Native Review Commission (ANRC) which was holding hearings in Barrow the same week. As villagers across the North Slope listened to the Osgood's account of the COPE settlement — broadcast live from the school library — no one listened more carefully than ANRC Chairman Berger, sitting to his right. Afterwards, he thanked Osgood for his presentation and said, "Sometimes we have to come to Alaska to find out what's going on in Canada."

COPE chief negotiator Bob Delury holding the Final Agreement in Tuktoyaktuk, March 1984: a superb job.

Sources for this article were the *Nunatsiaq News*, *News/North*, and the COPE publication *Inuvialuit*.

Further details of the agreement can be found in a booklet entitled: *The Western Arctic Claim: A Guide to the Inuvialuit Final Agreement*, which is available from Indian and Northern Affairs Canada, Ottawa, Ontario K1A 0H4, Canada. ■

Dome Struggles to Reduce Losses

Make or Break Year

On 1 August 1984, Dome Petroleum Ltd. signed an accord with its lenders to restructure about $5.2 billion (Canadian) of its $6.2 billion of debt. Taking almost two years to negotiate, the 650-page agreement is the largest corporate debt rescheduling on record and requires the troubled Calgary, Alberta, oil and gas company to raise $350 million of equity by 5 October.

The debt rescheduling involved restructuring 41 loans with 54 lenders, 15 of whom had made several loans to Dome. Under the plan, Dome will pay its debt more evenly over 12 years. Dome has been struggling under a massive debt load for two years, following an aggressive acquisition spree, largely supportive of its Beaufort Sea development plans. The debt restructuring involves divestiture of some of these assets, including 10 million shares of its 31 million shares in Dome Mines.

Meanwhile, Dome and its subsidiary, CanMar, are drastically scaling down their Beaufort Sea projects, cutting down northern operations from 1500 employees just two years ago to 900. Company spokespersons have said that unless substantial amounts of oil are discovered in the Beaufort this summer, Dome will likely break its five-year exploration agreement with the Canadian government and pull out a major portion of its drilling fleet.

Dome's year-round drilling caisson, the SSDC, has not been employed so far this season, and Dome is beginning to take supplies off the converted tanker sitting in McKinley Bay. If work is not found for it this summer, it will be mothballed, possibly for a long time until someone else wants it. The company's fuel supply tanker, the Skauuvan, will leave the Beaufort and return to Japan this summer. Its air fleet, including a Boeing 737, has been drastically reduced.

The company's four drillships were moved out of the harbor and began drilling in early July. Five delineation wells are being drilled around proven oil reserves. If the attempt to find commercial quantities of oil is unsuccessful, the company will be devoting its energy to selling off equipment instead of drilling with it. ■

Northern Perspectives

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GREENLAND

Lessons of self-government and development

Peter Jull*

Introduction

POLITICAL DEVELOPMENT HAS AT LAST COME to be recognized as a principal concern, or even *the* principal concern, of Canada's northern policy. However, in the plethora of conflicting studies, resolutions, threats, promises, and prejudices, it is not always possible to discern the essential elements. The danger is that in a situation of confusion, conditioned reflexes will prevail.

In the search for northern political forms, clearly the northern peoples must be satisfied and be fully involved in their design if they are to prove acceptable. Equally clearly, Canada as a whole must be well served. While Canadians look for models and principles in the South, or in other British Commonwealth democracies like New Zealand, some less widely known cases are ready to hand.

Circumpolar societies

Since World War II, the circumpolar region has experienced a number of stresses and developments similar to those in Canada and, more interestingly, various social and political similarities have emerged. Much can be learned from these events, the more so because they occurred quite independently, although now a more self-conscious era is dawning in which northern peoples look to each other for inspiration and support.

In northern lands all around the North Pole, small populations of distinct peoples — Europeans who have so evolved from their ancestor cultures that they now have distinct languages and societies, as well as non-European peoples like the Inuit — have increasingly asserted themselves against more southerly power centres. The clashes have involved, typically, conflicting philosophies of development, the threat of environmental damage to traditional economies such as fishing, disputes over jurisdiction and proprietary rights, problematic influxes of alien populations for large projects or modernization programmes, and the assertion of regional/ethnic survival despite minority status and limited political power.

The southern power centres, typically, have argued that the northerners will or should respond to the big salaries and development benefits assumed to be imminent, and that in any case so few people in such remote and uneconomic circumstances need not be dealt with seriously in political terms.

Thus the lines have been drawn, and the results have varied. What has not varied is the persistence of northern peoples, however few in relation to national majorities, in asserting their political rights and insisting that northern development be consistent with their world view. The repeated instances of these phenomena around the Pole should lead Canadians to reconsider some hallowed assumptions.

Northern societies are not just extensions of southern ones. They may have come into being as a result of an historical migration, but they have persisted because they have developed viable local forms of culture and economy which enable them to endure harsh conditions. When they fight to defend culture and traditional lifestyles, it is not just romanticism, or the work of a few trouble-makers or outside advisors; they are defending their clear interests. In the case of Canada, they are also exerting Canadian sovereignty and holding down our rather cumbersome territory for us all.

The stories of political change in native Alaska, among Siberian peoples, the Lapps (Saami) of Scandinavia, the Greenlandic and Canadian Inuit, the Dene, as well as Icelanders, Shetlanders, and Faeroese are most interesting. These and other northern regionalisms — the Åland Islands of Finland where a Swedish minority disposes of unique

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*Peter Jull specialized in northern and native questions as a constitutional advisor in the federal Cabinet office in Ottawa.

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political institutions, northern Norway, Labrador, or even Newfoundland itself — can teach us a great deal.

But the most striking recent development is that of home rule in Greenland, where an Inuit-descended population speaking the same language as Canadian Inuit has in 1979, peacefully and with the full blessings of Denmark, become a largely autonomous entity. The many similarities between the Canadian and Danish political systems (both parliamentary democracies), well-intentioned post-war arctic development policies, and Inuit cultures make the comparison even more striking.

The Greenland case

Greenland, or Kalaallit Nunaat in Greenlandic, is a country about five times larger than Denmark, of which it is constitutionally a part but with only one percent of the total population. Almost all of Greenland is covered with a great ice sheet and the population lives along a narrow littoral, mostly in the southwest where mild ocean currents keep the ports open all year, or farther north, for all but the mid-winter months. The eighty percent of the 50,000 population which is Greenlandic entirely dominates political life; the Danes take little or no part in Greenland politics, and none occupy elected positions. Most of Greenland is a geological extension of the Canadian (Precambrian) Shield, and one may assume that Greenland has similar mineral potential if one could only investigate under the ice. One lead-zinc mine now operates, but the employment base consists overwhelmingly of renewable resource industries.

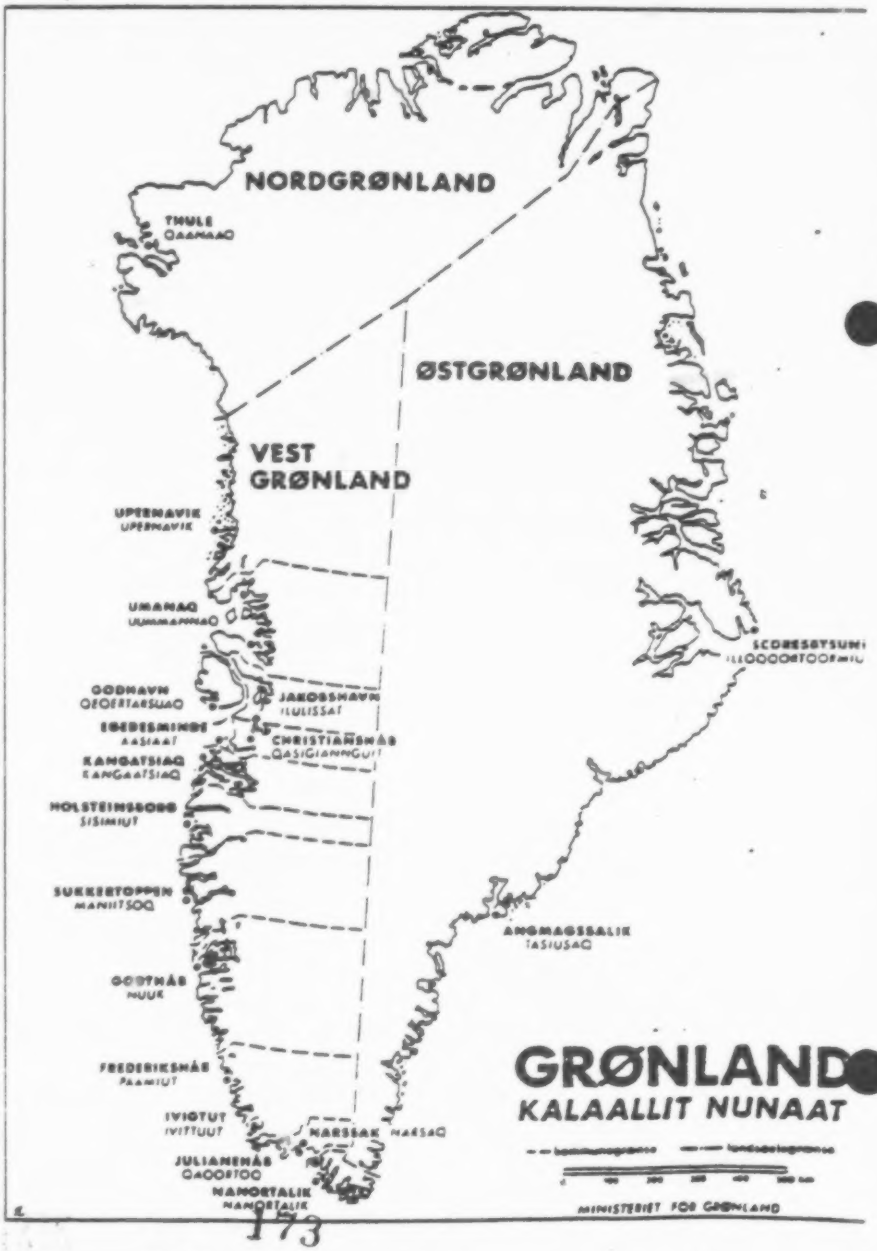
Greenland differs from arctic Canada in three principal ways. The milder climate of the most populated zone has already been noted; the communities are larger than Canada's northern settlements, even though the total Greenland population is about the same as that of the Northwest Territories; and the proximity of the various communities makes transportation and communications relatively easier than in arctic Canada.

Setting aside those characteristics, a northern Canadian visitor to Greenland would find much that was familiar. But he would also notice more and better goods in the shops; be startled by the vast apartment blocks; and would see the greater industrialization, particularly centred on shipping and fishing. As with northern Canada, the impact of the Second World War and a renewed northern effort altered everything, and for all time.

The small settlements and camps of the past have largely given way to the concentration of populations in "growth centres" to serve the fishing industry. This shift has created enormous problems, not least because the fisheries that were the centrepiece of a vast Danish development plan have been stymied by climatic changes that have dramatically reduced catches. The industry is highly subsidized, though very modern and efficiently structured, and only the shrimp of Davis Strait (also of interest to Québec Inuit) indicate immediate expansion possibilities.

The Danes had eased back on the population concentration policy in the last few years prior to home rule, and the new home rule government has named a minister for small communities to help revive opportunities in these places. The object is to ensure that high quality services are available in these smaller centres where the traditional culture has its roots, and where individuals and families may still eke out a more rewarding life than if they were crowd[illegible] into the alien environment of a hig[illegible] density apartment block with unfamiliar and equally disoriented neighbours from other areas. Ironically, while the growth centre policy has been a socia failure, it has no doubt played a role in the politicization of people who had to find new values in a too-rapidly changing situation.

Indeed, all observers agree that the pace of resettlement, the massive material developments of towns and infrastructure, and the large numbers of Danish expert technicians, managers and officials required to implement this European modernization have been the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GRØNLAND
KALAALLIT NUNAAT
MINISTERIET FOR GRØNLAND

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major force creating the present Greenland nationalist politics. The Greenlanders have been spectators while their world has been radically altered around them, even though the alterations were well-intentioned. While the number of Danes has declined greatly since the construction boom years, the other effects remain.

The social problems created by a large influx of Danes, persons who after all have been in the North because they are experts in their fields and who therefore manifest a certain implied mandate to "take charge," are easy to see. An instant and self-assured élite, whose entry qualifications in education and experience effectively precluded most Greenlanders, these newcomers were even paid at much higher rates for equal work when side by side with a Greenlandic worker. This inequity was of course allowed in order to attract sufficiently skilled personnel for a pressing schedule of work, but the northern impact was not foreseen.

Highly-paid European transients were able to have a good life in tax-free Greenland, and competition for the local girls, heavy drinking, and the general disregard for local preferences and traditions all made for conflict. As in most such cases, the violence was directed not so much at the outsiders as within Greenlandic families and communities in forms such as social and personal breakdown, assault, and family disruption.

The historical background

The Greenlandic people are an Inuit-descended people with mixed Danish blood. The most precise way of defining who is or is not a Greenlander is the use of the Inuit language — Greenlandic — an increasingly standardized dialect of Inuktitut and readily understood by most Canadian Inuit. While there are very few Greenlanders without some Danish blood, most of the people would be identifiable as having characteristically Inuit features in comparison with the fair-haired, blue-eyed Danes. The relative ethnic homogeneity of Danish society has allowed Danes to think of Greenlanders as Greenlanders, there being no "melting pot" ideology comparable to the North American immigrant societies which demand that everyone be simply Canadian or American.

Just before the year 1000 AD, Greenland was visited and then settled by Norwegians from Iceland, the so-called vikings accompanying Erik the Red. At the same time as he and his friends were occupying the two areas of sheep pasturage in southwest Greenland — near the present towns of Godthåb (Nuuk) and Julianehåb (Qaqortoq) — to establish their farms up the protected fjords, the Thule Eskimo migration was settling in northern Greenland. The two peoples did not meet for some time, but Erik had found the empty houses and kayak frames of another people all along the coast — the eerie remains of another Eskimo people, the vanished Dorsets.

In summer the Norse would travel up the coast to hunt polar bears and walrus, and there they met the Inuit. The first meeting, however, was probably in Newfoundland or Labrador when Leif Eriksen and other members of Erik the Red's family made their initial forays to North America. As time went on, the Inuit moved down the Greenland coast as the climate and species provided; that same climate, plus the competition for coastal species, made life harder and harder for the ill-adapted Europeans. The final demise of the Norse has intrigued many explorers, archaeologists and others, and was probably due to several combined factors. But one should recall that the "short" Norse interlude in Greenland was longer than the entire length of time that white settlers have lived in Canada.

The Norse were all gone from Greenland by 1450, and from their more northerly community there a century earlier. They had intensively farmed the areas of the country suitable to their traditional way of life, but had failed to adapt to worsening conditions and the loss of supplies from Europe. In 1721 a Norwegian missionary returned in the name of the Danish Crown, looking for these lost vikings; he found none, but instead stayed to begin the Danish colonization, a combination of religion and trade that continued with little alteration until 1940.

The period following the Norse demise had seen intermittent contact between Greenlanders and Europeans — often violent exchanges with sailors, whalers, and outright pirates from many nations. The Danish period saw the protection of the traditional Inuit lifestyle under the initial influence of Rousseauist ideas at the Danish court. The country was closed to outsiders, including Danes not directly involved in the essential work of religion, trade, and administration. The sealskin industry was the mainstay, and the KGH (the Royal Greenland Trade) was a benign state company curiously mixing the functions of a Hudson's Bay Company and a welfare department. The Danish traders and missionaries married Greenlanders, and the children were not always anxious to turn to the ancient and hard life of the kayaks. This "Métis" class is often cited as having provided an important bridging and leadership role in the Greenland community over the years.

In the nineteenth century some limited experiments were made in local elected councils, and there were always a few Greenlanders who would acquire education or training in Denmark. The Greenlandic language was encouraged, notably through the Lutheran state church which was totally Greenlandized over time, and by a newspaper and other means. In looking at the changes of recent years when Greenland has altered so dramatically, however, it is difficult to see that any of these factors were sufficient to ready the society for what has taken place. In short, one should beware of assuming too much about the power of the past; in both arctic Canada and Greenland, the challenges of the post-war period have been immense.

In 1940, with Denmark occupied by Nazi Germany, the United States and Canada were naturally concerned about the future of Greenland, in particular the Ivigtut cryolite mine which was essential for wartime aluminum production. Both the United States and Canada were authorized to open consulates in Greenland, and in 1941 the United States went even further by concluding a defence agreement with the Danish ambassador in Washington on behalf of his occupied country. The intrusion of North American supplies and industrial equipment made an impression, and both the local Danes and the Greenlandic leaders saw that they could manage on their own without Denmark. After the war they wanted both more modern material improvements and more local responsibility in Greenland.

The Danes had acquired Norway's overseas empire along with Norway in the Middle Ages. Even the most benign colonial master is always unpopular with subject peoples, and the Danes were no exception. The overseas empire remained with Denmark after the break with Norway — Greenland, Iceland, and the Faeroe Islands. The Faeroes sought to separate during the Second World War but the British occupying force refused, saying that such matters must be worked out with the Danes after the war; as it happened, the Faeroes negotiated home rule in 1948. Iceland separated while under American occupation, a distressing recollection to some Danes who now have exaggerated concerns about Greenland's possible seduction by the big North American nations of Canada and the United States. Of course, the Danes would doubtless have accepted Icelandic independence in any event, but when under Nazi rule they had no power to protest.

Following the Second World War, the Danes moved to show the world that Greenland was not a colony, and to modernize the country. Greenland was formally integrated into the Danish state.

Cont'd on pg. 6

Translation

Statement from Thule's Municipal Council Concerning the Passage of Canadian LNG Tankers Through Greenland's Waters

Fall 1979

According to the press, a Canadian oil company has planned navigation routes for its gas tankers from Melville island through Lancaster Sound across Baffin Bay — by four different routes according to the season — and further down along the coast of Greenland. . . .

In light of the above, the Ministry for Greenland has sent an advisor from Marin I.D. [a private consulting firm], who on 25 August 1979 met with the Economic Committee and the chairman of the hunters' union. He gave an account of what lies behind the scheduled tanker navigation, and questioned the town council and the hunters' union concerning this navigation.

The advisor's report will later be submitted to the Ministry for Greenland, but at this stage we would like to draw attention to the fact that the meeting was definitely not encouraging. From the town council's and hunters' union points of view, we are worried that the tanker navigation will so critically disturb the natural environment that the means of subsistence for the Thule people — even the people of all North Greenland — will disappear and thus result in the destruction of the hunters' culture.

It should be kept in mind that the areas where navigation is planned belong to the limits of existence of all life, and that even small disturbances in the balance of nature can have incalculable consequences.

We have clearly dissociated ourselves from the optimistic pronouncements from the Canadian side about the effect on the hunting conditions, and have demanded thorough scientific investigations of the effect on the ice condition and the animal life cycle.

We do not wish to hide the fact that we, from Thule's point of view, would prefer that the navigation not take place. However, this would probably be impossible to achieve, because the routes are in international waters. Therefore, we urgently suggest that we from the Danish/Greenlandic side negotiate an agreement whereby only the southernmost of the four planned routes from the Canadian coast to Greenland's west coast will be used. This suggestion is based on the following premises:

1. The shipping routes in Melville Bay will run through the seals' breeding area and scare the seals away, because of the strange smells, noise, and icebreaking.
2. When the seals disappear, the polar bears will disappear too, since they live on seals.
3. A favourite breeding area for the polar bear — in the bottom of Melville Bay — lies fairly close to the navigation routes.
4. The migration routes of the narwhals and the walrus will intersect the navigation routes, with the possible result that these animals will disappear.
5. Melville Bay is today the most frequently used hunting ground for polar bears, since the Canadian ban on polar bear hunting in Canadian territory around Kane Basin.
6. The ice is the most important communication route for the hunters in the season October/November until June/July. It is feared that the heavy icebreaking, combined with the winds and the currents, will interfere seriously with their communication.

The conditions for hunters today are already so bad that a further deterioration will be a catastrophe. None of the above mentioned items can bear any disturbance without causing serious concern that the hunters' livelihood will disappear.

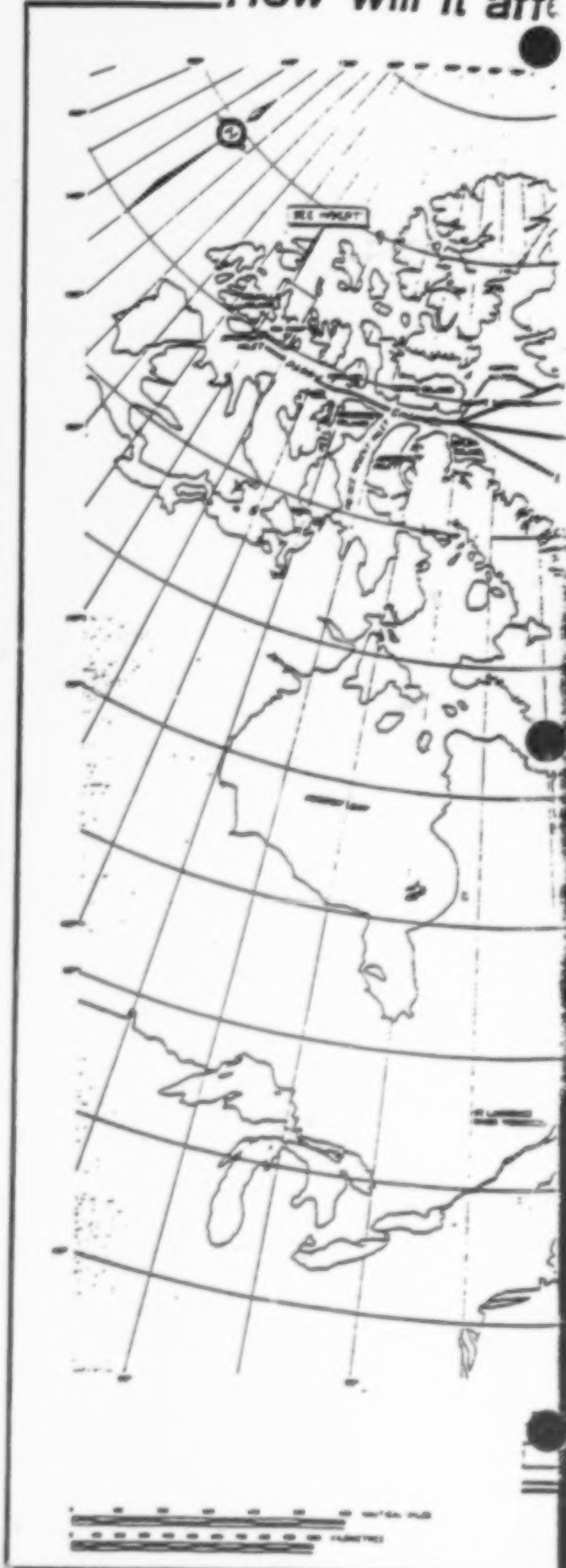
We therefore request everybody involved in this project to consider these points, and we hope that the responsible persons will treat our case in a positive way. Our Greenlandic culture is at stake!

For the Municipality,

D. Nielsen, Mayor

Canada's Arc

How will it aff



Greenland ?

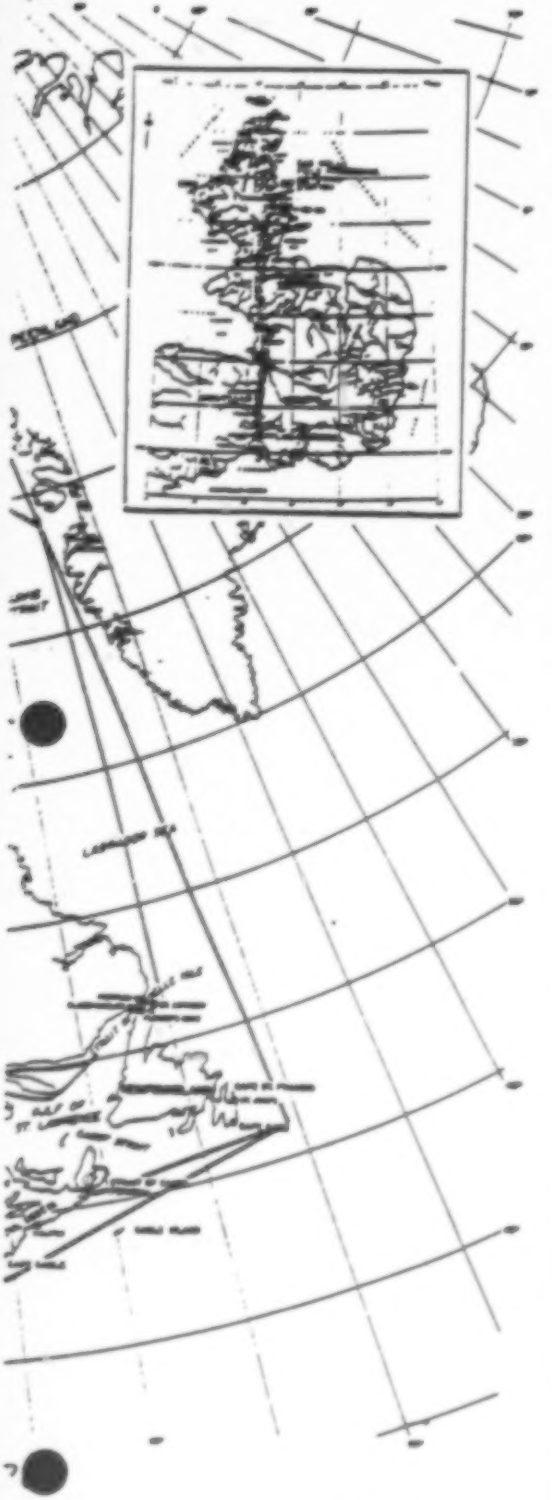


FIGURE I
ARCTIC PILOT PROJECT
PRINCIPAL COMPONENTS

Greenlanders have expressed serious concerns about the possible repercussions of Canada's $1.5 billion Arctic Pilot Project, the route of which follows the west coast of Greenland. What is this project and who are its sponsors?

Petro-Canada, Alberta Gas Trunk Line, and Melville Shipping are sponsoring the Arctic Pilot Project, which would ship liquefied natural gas (LNG) by tanker from Bridport Inlet on Melville Island to a Canadian port on the east coast. There, the LNG would be vapourized and exported by pipeline to the United States. In the words of its sponsors, "the Arctic Pilot Project is designed to demonstrate the technical feasibility of natural gas delivery by ship from the Canadian Arctic Islands and to demonstrate an acceptable environmental impact of such movements." It would rely on two Class VII icebreaking tankers, 335 metres long and carrying 140,000 m³ of LNG. These would be considerably larger and more powerful than existing Canadian icebreakers.

Regulatory review of the project by the National Energy Board and the Federal Environmental Assessment Review Office is expected to begin in the first half of 1980.

On 12 December 1979, Petro-Canada officials flew to Copenhagen for a meeting about the Arctic Pilot Project, hosted by the Permanent Under-secretary of the Ministry for Greenland. Canadian government officials were also present. On the Danish side, negotiations are being conducted by the Ministry for Greenland, with all correspondence, briefing notes, and other material being forwarded to the home rule authorities. Denmark retains responsibility for foreign relations, and the home rule authorities will not be taking part until negotiations have progressed further.

The December meeting dealt with two issues: routing and the environmental programme that will be associated with whatever route is selected. A Denmark-Petrocan working group was set up, and will hold its next meeting in Calgary, tentatively on 5 February 1980. The questions of routing and environmental programme will once more be the prime subjects of discussion, and Petro-Canada is hoping to arrive at an agreement on route selection.

and a wave of material and social development began. A particularly progressive prime minister, Hans Hedtoft, encouraged public discussion about the future of Greenland, beginning in 1946. In 1948 he appointed the Joint Greenland-Danish Royal Commission, which reported in great detail in 1950. Two mixed Greenlandic-Danish inquiries, the first being legal in scope and the later one sociological, were brought in to provide further diagnoses of growing social malaise. Young Greenland nationalist leaders began to take a much tougher line, and began to get elected to the Danish parliament and the Greenland council.

The coming of home rule

Following more strident political demands from Greenlanders in the early 1970s, especially from elected Greenlanders and Greenland students in Denmark, an official committee of elected Greenlanders was struck by the Danish government to consider the demands for autonomy. The recommendation was that a home rule commission be established to devise a plan and legislation for the transfer of government powers and administration to Greenland. In 1975 this commission began work. It was composed of seven elected Greenlanders (the two Greenland MPs and five members of the Greenland council) and seven Danish MPs from the major parliamentary parties, chaired by a neutral professor of Danish constitutional law.

The work of the commission was publicly accessible, and the public was kept well informed of developments through information sessions, public documentation, and debate spurred by commission members in developing their own positions and compromises. The process led directly, for example, to the formation of the three Greenland political parties which covered a wide spectrum of political opinion, but all of which, significantly, were committed to self-government for Greenland. The preparation of the report was a process of political bargaining, and thus the final result was highly saleable in both Greenland and Denmark. Despite bad weather and the organized opposition of Greenland's municipal governments (who liked their relative autonomy and lack of supervision from remote Copenhagen), the home rule plan was adopted by a margin of more than two-to-one in the Greenland referendum of January 1979. The plan came into effect on 1 May 1979, following elections in which the more nationalist and socialist of the two main Greenland parties, Siumut, elected a clear majority.

The home rule plan does not involve any constitutional amendment, the legislation being simply a series of acts of the Danish parliament. As an act devised by joint negotiation, it is understood that it will not be amended except by further negotiated agreement. (Such a protocol short of constitutional change might be of interest to Canadians concerned with constitutional-type legislation such as the northern territories' constitution acts or the Indian Act.) The situation satisfies the Greenland leaders, although they might prefer the greater security of constitutional change; however, the required referendum for constitutional amendments would have to pass in the whole Danish state, and the one percent of Danish population in Greenland would be unlikely to muster the required support.

While the Faeroese home rule has a more pay-as-you-go basis, revenue potential in Greenland did not favour the same approach. Nevertheless, an important precedent in Greenlandic eyes is that the Faeroes, though part of Denmark, are outside the European "common market" (EEC) because their home rule predated Denmark's joining the EEC and they had no wish to join. Majority opinion in Greenland favours Greenlandic withdrawal, for protection of the Greenland fishing zone from European fishermen, and for fear of greater industrialization pressure and the influx of outsiders. Denmark has proven accommodating on this issue to date, including the prime minister's pledge to support withdrawal if Greenland so chooses. In fact, Denmark has shown much openness on the foreign policy concerns of Greenland, despite Danish retention of that constitutional power in perpetuity.

The Danish administration of Greenland has operated through the Ministry for Greenland based in Copenhagen. The ministry will now continue to look after those functions not yet transferred to Greenland and will perform various planning and monitoring roles, as well as continue to retain the non-renewable resources administrative staff. The Royal Greenland Trade department, which operates the industries and major services of Greenland as a state company, the overwhelming majority of whose employees are Greenlanders, is also to be taken under Greenland control over the next few years, and may be broken up into more locally-manageable units and/or co-operative enterprises. The Greenland Technical Organization, which performs the power, engineering, and construction functions, is also to be made more locally responsible and taken over by Greenland.

The Danes have established a very short list of reserved powers — defence, foreign relations, currency, and so on — and are willing to negotiate the rest with Greenland, subject to the working ou[illegible] financial arrangements. In those ar[illegible] where Denmark is providing subsidies, there are some very general conditions attached — that schooling be universal, that there be no discrimination — much like those applied by the Canadian federal government in shared-cost programmes with the provinces, such as medicare and welfare. Many Greenlanders assume that once the first "bite" of home rule is digested, further powers will be negotiated; but as a senior Danish official closely involved has said, "Greenland now has all the powers to do almost anything it likes."

Management of resources

As noted above, the home rule government in Greenland will soon acquire powers over industry and infrastructure, including the regulation of the environment onshore and offshore. The conservation of nature and wildlife is now in Greenlandic hands. In the interim, of course, the Danish authorities in this and in other areas try to prepare the way and consult widely with the Greenland leaders on any important issues. Meanwhile, Greenlandic home rule pow[illegible] over labour markets and local planni[illegible] give considerable power *de facto* over development.

The resources power is also considerable and, along with the EEC issue, the most contentious in the home rule negotiations and likely to continue to be so. Although the Danes insisted on the retention of the land and resources of Greenland as commonly owned by all the people of the Danish state, according to the Scandinavian practice (so different from our own), it was conceded in the official Home Rule Report that the Greenlanders have "fundamental rights," "notably in terms of certain politico-moral claims." This wording was the compromise with which the Danes met the Greenland aboriginal rights claim, and, while it does not satisfy the political majority in Greenland, it is hoped that the concession can be worked into a more clear and definite Greenlandic title in the future.

The practical compromise made is striking. While the Danes retain the administrative staff for non-renewable resources management, that bureau is accessible to the Greenlandic authorities too. Moreover, Greenland has a veto on any resources policy or project. [illegible] revenues accruing from resourc[illegible] management/taxation are directed to the Greenland home rule government up to the level of the overall Danish administrative subsidy for that year. Beyond that level — and no one expects to reach it soon — relative shares would be for negotiation, but it is generally assumed that the Greenlanders would get at least fifty percent. This regime applies both on- and offshore. A joint Denmark-Greenland working committee is designed to solve any differences, and to find compromises on contentious issues so that these do not escalate to a political confrontation where either side would use its veto. The administration would attempt to work out comprehensive plans acceptable to all sides.

Other important powers turned over to Greenland are direct and indirect taxation, education, local government, trade, the established church, and all cultural matters, including broadcasting. All social policy matters are also transferred, of course. Greenlandic is to be the main language, but Danish must also be taught in the schools and public offices must be able to transact business in both languages. In the longer term, transport, health, supply, and complete environmental management are to be turned over to Greenland.

The Danish block subsidy grant is calculated by reference to the existing costs of services, but within the total arrived at the Greenlanders may reallocate as they please, so that funds calculated for one area might be transferred to another and old programmes phased out or cut back.

Courtesy Royal Danish Ministry

The new Greenland faces many problems. The fisheries, far and away the major source of employment in a country with a heavy service sector, are always a problem. There is only one operating mine in the country, and it is unlikely that others will develop soon, for world market reasons as much as local political sensitivity. Drilling for oil offshore has yielded nothing to date, despite test drilling of the most promising locations in Davis Strait. Economic diversification, and especially the development of locally-controlled, environmentally sensitive activities is needed. Some observers wonder how generously Denmark can continue subsidy levels, and note also that the special funds from the EEC regional budget would disappear if Greenland opted to withdraw.

Critics note that much of the Danish money spent in Greenland returns to Danish hands and firms, and that Denmark still has substantial levers. They say that Greenland has the symbols of independence without the reality. Ultimately the answers to these questions may lie in the shifting balance and perception of independence and interdependence in an ever smaller world, problems with which Canadians are all too familiar.

Politics and public attitudes

Canadians have some misleading notions of Scandinavia, and in many respects the shape of Greenland political life is conditioned by the norms of Denmark. Just as some Danes and Greenlanders believe that the Canadian side of Davis Strait is a free-for-all of unbridled capitalism, so many Canadians nervously regard the Scandinavians as "socialists." Yet in no part of Canada is government as all-pervasive as in the Northwest Territories, and in Greenland harried planners will try almost anything to generate economic activity. Ideology is not a particularly useful measure for comparison on either side of Davis Strait.

By Canadian standards, the Scandinavian countries have more left-oriented attitudes and governments. It is worth noting that the same countries, for various reasons, have arguably developed the highest standards of living and the most stable and peaceful societies in human history. Scandinavian social democrats are as respectable and established as any Establishment here, and just as subject to the impatience and criticism of the young.

Greenland has also inherited the spirit of political compromise in Denmark, where virtually no majority governments have ever held power since responsible government was established. (There are even those in Greenland who are a bit shocked by the fact of a Siumut majority government there and think a coalition, even at the expense of any elected opposition, would be better for national unity!) The home rule negotiations and Danish-Greenlandic relations since home rule have indicated that, despite strongly held views on some subjects, the Greenland leaders are as skilled and practical politicians as any other, and as ready and able to negotiate good deals for their people.

As with any emerging nationality, cultural questions are very important, and some of the most vigorous debate in Greenland centres on the Greenlandic identity. The role of the Inuit tradition *versus* the hybrid Greenlandic culture with its European connection is central. Much stress is being placed on language development and use, but concurrently a newly emergent country with more international personality requires a world language, and interest in English (already known by many Greenlanders) is strong.

Royal Standard — Denmark

Even a country as apparently isolated as Greenland has choices about its neighbours. There are Inuit kinsmen living in Canada and Alaska with a natural interest for Greenlanders, and younger Greenlanders take a strong interest in developing closer cultural ties. But the large North American countries also make some Greenlanders nervous, and there is a natural attraction to the smaller nations of the North Atlantic, especially those outside the EEC which share a Scandinavian language tradition such as Iceland, the Faeroes, and Norway. Some Danish officials find it difficult to understand these natural affinities and common interests, and accordingly discourage them.

The question of development philosophies is very important, as in other northern areas around the world, especially where a renewable resource-based economy prevails. The large iron ore deposit near the capital Godthåb (now Nuuk) may someday be developed. It would, however, raise major environmental problems, as well as require a labour force of a size not to be found in Greenland and which could, if imported, have a major social impact. The uranium of south Greenland, the only source of uranium in the EEC, is also a controversial subject. Possible tanker movements from the Canadian Arctic are a serious concern. The presence of foreign fishing vessels off the coast of a country that cannot find enough fish for its own plants is a major political and economic issue, and the main reason for suspicion of the EEC.

In general, the Greenlanders want to stop the unquestioned march of industrialization, ask what it is doing to their country, and then make some real choices. This means a new emphasis on sustaining the smaller communities where social and cultural conditions are happier, and a renewed look at the possibilities of traditional local resources which, according to Copenhagen economics experts, have proven more productive in recent times than was thought possible. Greenlanders want economic development which is amenable to local management and control, and which is environmentally sound.

Conclusions

The Greenland case provides a number of provocative parallels for Canadians. Perhaps the largest consideration of all is that Denmark has provided, with all-party equanimity, a great deal of autonomy for a small ethnic minority occupying the lion's share of the country's land and resources. At the same time, both Greenlanders and Danes have accepted the good sense of a continuing relationship in which the Danish state plays an important (and subsidizing) role while Greenland struggles towards economic viability, not to mention the maintenance of warm and wide-ranging cultural and political ties.

Despite Greenland's previous legal position as an integral part of the Danish state, resistance on grounds of ethnic exclusivity or endangered national unity was not a real problem. No doubt this fact was largely due to the physical separation of Greenland from Denmark, and their strikingly different cultures and histories. In Canada, by contrast, the native population was encountered from the first moment of settlement, and settler habits of dealing with it have merely continued into our North without outmoded assumptions being questioned.

The Danish process of open-ended negotiation of authority, allowing for flexibility and the choice of areas of Greenlandic special interest in the evolution of home rule, has many benefits. It provides for phasing so that continuity is protected, but also for appropriate responses to local conditions rather than, as with Canada's constitution, reference to an inflexible division of powers established in another century. There is no reason to assume that old solutions, let alone southern solutions, are most suitable for the Arctic today. Because Canadian officials are so conscious of constitutional precedents, northern Canadians are always being slotted into one or other existing model—usually an uncomfortable or unsuitable fit. Or worse, the lack of fit is cited as a reason to deny overdue self-government powers to the North.

It is worth noting that the Danes recognized the special importance to a remote northern country of certain types of powers, despite the small population and limited revenue capacity: culture to let people survive and flourish; labour markets to control outside access to local jobs and hence population inflows; planning and resources, both renewable and non-renewable; the environment; and maximum freedom to develop their own ways within some very general norms of human rights. No model was imposed on the Greenlanders, but rather they were invited to negotiate their concerns. Astute Danish and many Greenlandic observers believe that, as with the Faeroes, home rule in Greenland will permit a new and more healthy relationship with Denmark, and they foresee Greenlandic separatism as less likely than over-dependency.

Another area of interest for Canadians is the home rule negotiating format. Elected native Greenlanders, joined in equal numbers by elected Danish politicians of all major parties, worked out principles and details, with much public input and debate. This procedure had the good effect of making the product both politically sensitive and saleable in both Denmark and Greenland. But it also provided an important education and stimulus for political development within Greenland and, as noted, led to the creation of political parties. This method contrasts considerably with the Canadian format of the Drury commission on Constitutional Development in the Northwest Territories, in which one distinguished public figure develops ideas through a series of personal contacts, backed by a policy support staff including no native northerners. Some observers have even believed that the Drury format was specifically designed to balance the perceived pro-native bias of the Berger Inquiry, whereas no such suspicions would attach to a more open mechanism. At any rate, the major authorship role of the indigenous community in Greenland contrasts markedly with the Canadian case. In Greenland the distinction between permanent and temporary residents is clearly made in the important matter of determining political destiny.

Yet underlying all the above factors may be another, more elusive. That is an attitude of trust and respect that the Danish state has shown towards Greenland and the Greenlanders. It is unlikely that much progress of any kind can take place, in the North or elsewhere in Canada, as long as the Canadian European-descended majority regards the native people with condescension, fear, or suspicion. Self-government implies equality of persons and collectivities, the removal of paternalism, and listening to the expression of values and aspirations of native peoples. The impatience with which many white northerners and southerners regard proposals which differ from their own inherited cultural bias is not helpful, and should not be the basis for any government policy. Perhaps the Danes should be noted above all by Canadians for their reputation as the most tolerant of Western societies.

Author's note

Anyone seriously researching the home rule question should refer to the authoritative work by Ole Olesen, Secretary to the Home Rule Commission, *Home Rule for Greenland*, available from the Circumpolar Section, Northern Affairs Program, Department of Indian Affairs and Northern Development, Ottawa K1A 0H4. An important critique of home rule is also available in the IWGIA Newsletter of June 1979, "Greenland From Colony to Home Rule," by Helge Kleivan, available from IWGIA, Frederiksholms Kanal 4A, 1220 Copenhagen K, Denmark. An excellent general survey of the history and society of Greenland up to the 1970s is found in Hubert Schuurman's *Greenland: Canada's Eastern Neighbour*, published by the Northern Program, DIAND, like the Olesen study. Schuurman also has a thirty-minute film, *The Greenlanders*, available from the National Film Board of Canada. Useful studies have also been carried out by other Canadian official bodies, such as the work of Al Zariwyny of the Government of the Northwest Territories. Canada's Greenland authority of greatest knowledge and longest standing remains Dr Trevor Lloyd of the Ottawa-based Association of Canadian Universities for Northern Studies.

This is the first issue of *Northern Perspectives* since 1975 that has not been edited by Edie Van Alstine. Edie has left CARC for a new career, in which she will no doubt remain a member of what Thomas H. Middleton calls "a small army of linguistic conservatives, respected, correct, and valiant, standing on the sidelines calling 'Foul!'" The new editor of *Northern Perspectives* hopes to maintain the very high standards that Edie set for this journal.

Canadian
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C2 Anchorage Daily News Saturday, December 10, 1983

Greenland can serve as model to Alaska Natives, says premier

By RICHARD MAUER
Daily News reporter

Greenland Premier Jonathan Motzfeldt added his voice to the growing discussion of Native sovereignty in Alaska Friday, saying Eskimos could learn from his country's experience in achieving autonomy from Denmark.

"We have a good home-rule agreement, we have a government, we have a parliament, we have a young democracy," he said. "I think it's a kind of exciting thing. I will tell our friends it is a good idea for Alaska and Canada Inuits."

But Motzfeldt, who is touring oil production facilities in Alaska, cautioned that the North American political system is not directly comparable to the relationship that Greenland has had with Denmark, first as a colony and now as a dependency with limited self-rule.

"It *is* good for us. *Maybe* it is good for them," he said.

Motzfeldt made his remarks at a press conference at the Inuit Circumpolar Conference office in Anchorage. The ICC represents the Eskimo people of Alaska, Canada and Greenland. It currently is seeking Soviet authority to bring the Eskimos of eastern Siberia into the organization as well.

Motzfeldt came to Alaska earlier this week with about two dozen other government officials to meet with Arco representatives and continue year-long negotiations over drilling rights on the world's largest island.

Premier Jonathan Motzfeldt

On Thursday, the premier toured the oil fields around Prudhoe Bay. He is scheduled to fly to Barrow today for advice from "our Eskimo friends in the North Slope Borough" on how to deal with oil companies.

Speaking in English and wearing a dark-green anorak, Motzfeldt, 45, talked of concerns that Greenlanders have over how oil development will affect subsistence hunting and fishing — the same problems faced on the North Slope.

"We've never had this experience in Greenland," he said.

At the same time, he said, Greenland may have something to show Alaska Natives as a result of its achievement in 1979 of home rule over most state affairs except defense and foreign policy.

Greenland is sometimes held out as an example by Alaska Natives who are trying to achieve some measure of sovereignty over political affairs, land, taxation and game management.

"But I know it's another situation than us," Motzfeldt said. "Our Motherland, if you call it that, is so far away from Greenland — 3,000 kilometers (1,800 miles) away — and we have a majority in our country, an Eskimo majority."

On a related subject, Motzfeldt said he will closely follow the ICC Native Review Commission over the next two years. The commission is examining how well Eskimos, Indians and Aleuts are faring under the 1971 Native claims settlement act and the Native corporations it established.

Though Greenlanders generally support a nuclear-free zone for the Arctic, Motzfeldt said, the country has no intention of dropping out of NATO or closing the two U.S. bases in Greenland, including the strategic Air Force radar station at Thule.

One cultural contribution Greenland hopes to make through the ICC is to establish a universal writing system that could be used by Eskimos across international boundaries and the barriers established by dominant second languages: Danish, English or Russian.

Northern Perspectives

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AUSTRALIA : native rights in another land

> *We will legislate to give Aborigines Land Rights — not just because their case is beyond argument but because all of us as Australians are diminished while Aborigines are denied their rightful place in this nation.*

THIS WAS THE UNEQUIVOCAL STANCE TAKEN by the Labour Party in Australia's national election of 1972. Under Prime Minister Gough Whitlam, the Labour government appointed a commission headed by Mr Justice A.E. Woodward to inquire into "the appropriate means to recognize and establish the traditional rights and interests of the Aborigines in relation to land, and to satisfy in other ways the reasonable aspirations of the Aborigines to rights in or in relation to land." During the course of the commission, two Aboriginal Land Councils were set up in the Northern Territory and provided with legal assistance in preparing submissions before Mr Justice Woodward. These land councils were given a statutory role to play in implementing the eventual legislation, which was largely based upon the judge's recommendations.

In 1976 Australia's Commonwealth Parliament enacted the Aboriginal Land Rights (Northern Territory) Act. The act granted Aborigines of the Northern Territory ownership of reserve land totalling approximately 245,200 square kilometres — eighteen percent of the territory.

What is the significance of these faraway developments for Canada? In the Yukon, the Northwest Territories, and other parts of Canada, native land claims remain unresolved. While the Canadian government has selected the negotiation process as a means of resolving land claims, the types of issues that arise are universal. Thus, it is important to appreciate the directions that are being followed in Australia's Northern Territory and to understand their possible application here. For, like the Australians, all of us as Canadians are diminished while our native peoples are denied their rightful place in this nation.

Hermannsburg Mission, Northern Territory

Photo: Kimberley Land Council Newsletter No. 21, May 1978

ABORIGINAL LAND RIGHTS

A Canadian's impressions

Constance D. Hunt

Canberra 21 May

Some two hundred people from throughout Australia have gathered for a Symposium on Land Rights, sponsored by the Australian Institute of Aboriginal Studies. The group includes blacks (Aborigines) from both remote tribal areas and major urban centres, the staffs of Aboriginal land councils, anthropologists, lawyers, and others, as well as a small group of non-Australians with experience in similar issues. Also in attendance is Mr Justice A.E. Woodward, head of the 1973-75 inquiry whose report provided the model for land rights legislation enacted in the Northern Territory.

Before the conference is officially opened, complaints are voiced that there are insufficient chairs in the conference hall for everyone who wishes to attend, and that a number of blacks have been relegated to an upstairs room to watch the proceedings on television. Several whites offer their chairs, and the conference organizers promise to try and remedy the situation.

An opening address is given by Senator Fred M. Chaney, the Commonwealth (federal) government's Minister for Aboriginal Affairs, who exhorts the audience to be constructive in its discussions and not to denigrate the positive steps that have been taken to date. He has just left the podium when a speaker rises from the floor. She tells the conference that several white people were recently charged with destroying Crown property when they dug up a portion of the lawn in front of the Parliament House in Canberra; this action was to demonstrate their support for Aborigines on the Noonkanbah cattle station in Western Australia whose sacred sites are being threatened by the drilling of oil and gas wells. She suggests that the conference should adjourn to the law courts (where the accused are appearing at 10:00 a.m. to enter pleas) in a demonstration of support. A hot debate rages for twenty minutes as to the appropriate tactics. Motions are made, amended, and criticized. One speaker points out that it is already past ten o'clock. A few minutes later, in response to a suggestion from another speaker, blacks one by one rise to their feet and leave the conference hall. When less than half the audience remains, the chairman declares an adjournment for tea until 11:00 a.m. The proceedings, which have never really begun, are adjourned.

Many people wander the few blocks down the street to the law courts, in the crisp sunshine of the Canberra morning. Once indoors, we mill around aimlessly in the foyer, obstructing traffic. Someone says that the Australian Broadcasting Commission is sending down a film crew to capture the demonstration. Nothing happens. After a few moments, it is announced that the case has already been disposed of, so the crowd heads back for tea.

During the remainder of the conference, I continue to be struck by the volatility of the Aboriginal mood on the subject of land rights. Although I have witnessed many emotionally charged scenes at similar conferences dealing with native claims in the North in Canada, never have I seen a level of anger and determination so developed and sustained as I experience in Canberra.

Melbourne 25 May

I meet several white Australians casually, in a friendly social atmosphere. The conversation turns to land rights. They tell me that the land rights issue is being created by outside agitators, left-wing "stirrers" who are politically motivated. The identification of sacred sites by Aborigines is a hoax, they say, which is more related to black interest in financial gains than it is to a cultural attachment to the land. Did I realize, they ask, that Aborigines are the most primitive race ever discovered, and that they have proven themselves to be nearly incapable of adapting to progress?

Alice Springs 27 May

I am met at the airport by Ross Howie, the solicitor to the Central Land Council (CLC). The CLC is one of three land councils established as a result of the Aboriginal Land Rights (Northern Territory) Act. The council members are Aborigines living in a particular geographical area, and selected by methods approved from time to time by the Minister for Aboriginal Affairs. Certain staff members — for example, lawyers such as Ross, and anthropologists — tend to be non-Aboriginal. The councils have been given tremendous responsibilities under the act, and among other things represent Aboriginal land-owners in dealings with outsiders concerning the land. The notion behind the establishment of the councils is that they would have the

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Constance D. Hunt is Professor and Associate Dean of Law at the University of Calgary. In May and June 1980 she spent several weeks in Australia studying Aboriginal land rights.

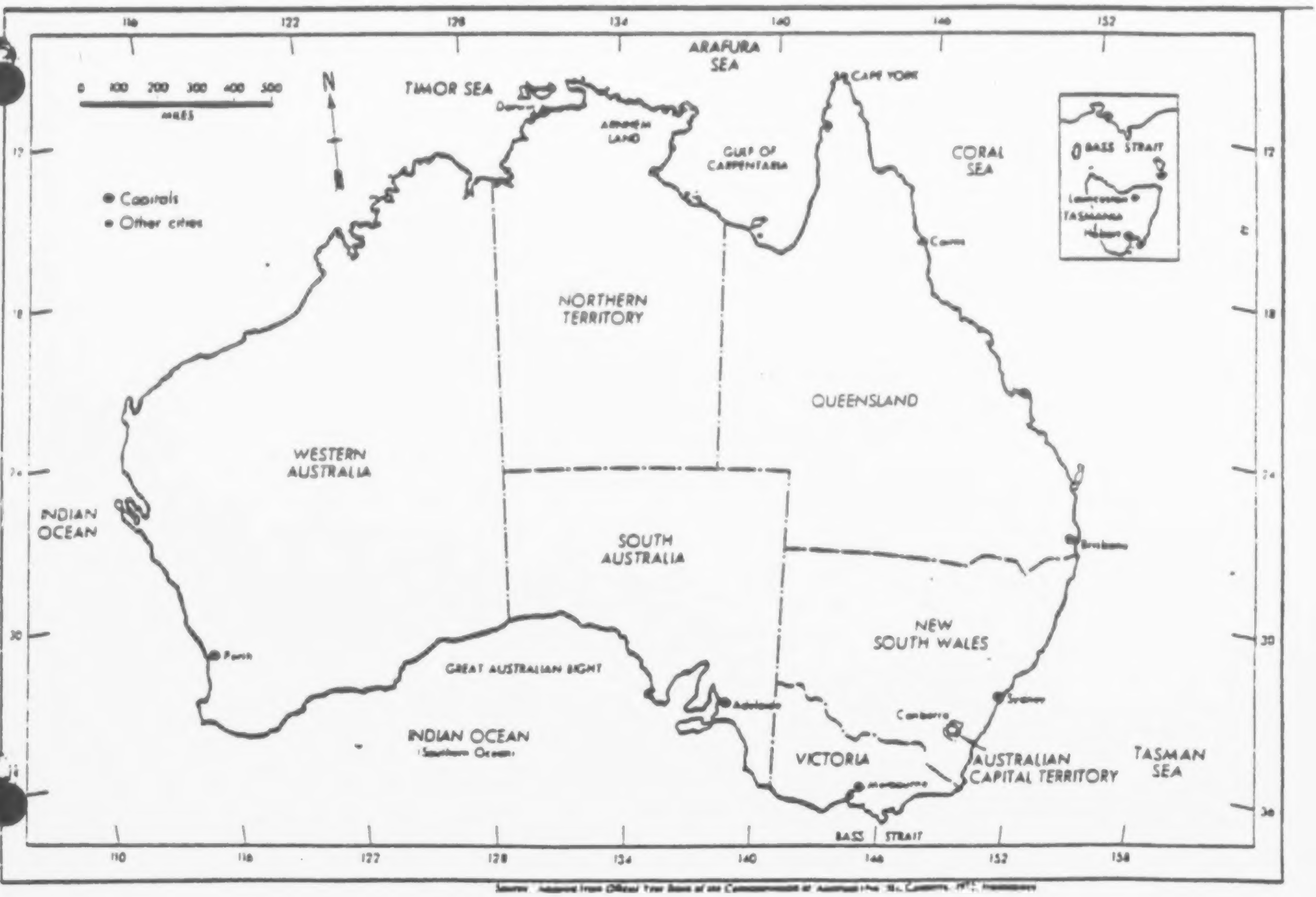
resources to hire experts knowledgeable in matters affecting Aboriginal lands, and would be able to act as a kind of buffer between Aboriginal land-owners who often live in isolated, traditional settings, and others who wish to use their land, such as mining companies.

Ross is on his way to visit a small Aboriginal community some forty miles from Alice, where, he tells me, "a small problem has arisen." We speed along a bitumen road, surrounded by vistas of red land, green gum trees, and the purple MacDonnell Ranges rising in the distance. Suddenly we turn off the main road and drive along a dusty sideroad past a sign that announces we have entered Aboriginal land. We pull up in front of two recently constructed buildings, whose appearance suggests either houses or meeting halls. A few orange plastic chairs appear, and are arranged in a semi-circle in the sun. I join the other white visitors in taking a chair, while most of the local blacks sit in front of us on the cement porch or squat in the dust.

These Aborigines, I subsequently learn, constitute the land trust and are the traditional owners of the land we are on, previously a reserve. One of the purposes of the act was to establish a system whereby existing Aboriginal reserves (some eighteen percent of the Northern Territory), which were once held by the Crown, could be turned over to Aborigines. The system devised by Justice Woodward was an attempt to draw upon traditional culture, in which older people in the tribe were very influential. According to Aboriginal tradition, the owners of particular country tend to be well-known by those who use or live on the land, since the owners have usually acquired the land by descent, and as a result of certain ceremonies. The scheme of the legislation is that each piece of Aboriginal land is formally held by a land trust, made up of elders or some traditional owners. Usually, the traditional owners must be consulted before a land trust or land council may authorize use of the land or grant interest in it.

Ross starts the meeting, explaining its purpose. It had recently become known that a man named Abdul and his family were living on the land held by the trust without the permission of the owners, as now required under the act; their herd of some forty camels was on the land as well. On the owners' instructions, the Central Land Council had served notice on Abdul that he and his family and the camels would have to leave, since they were there without permission. Abdul had objected, and the meeting was arranged to give him an opportunity to explain his point of view. Abdul's explanation is that he was hired by the owner of the camels some time back as a "cameleer"; it was the owner's intention to set up a business with the local Aborigines in which camel safaris into the desert would be arranged for white tourists. He knew nothing of the need to have a permit to be on Aboriginal land because, he says, "I'm just the bloke that looks after the camels." Ross carefully explains the requirement of the new act that entry on Aboriginal land is only allowed for those with a permit from the council.

There is a lengthy debate about the camel situation, with some disagreement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QUEENSLAND
WESTERN AUSTRALIA
INDIAN OCEAN
SOUTH AUSTRALIA
Brisbane
NEW SOUTH WALES
Perth
GREAT AUSTRALIAN BIGHT
Adelaide
Sydney
Canberra
INDIAN OCEAN
(Southern Ocean)
VICTORIA
AUSTRALIAN CAPITAL TERRITORY
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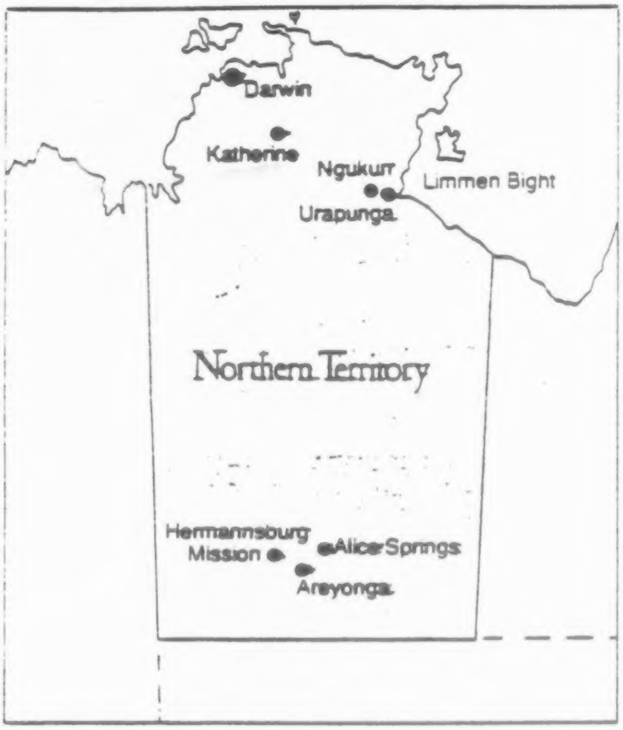


about the history of the problem. Many of the owners complain that the camels are destructive to the land and should be removed immediately. Then another problem emerges. It seems that four camels had been given as a gift to Bill, a local black who has lived in the community for many years but who is not a traditional owner. Several people are adamant that his camels must also be removed, but Ross points out that, under the act, Bill is entitled to stay on the land along with his property.

The discussion continues, while flies buzz around our faces. Small children run back and forth to their mothers, and bony dogs wander in and out of the circle. Eventually a decision is reached. Abdul will be given a temporary permit to stay for a week; in the meantime, a meeting will be held with the camel owner to determine his proposal and to enable the land-owners to make an informed decision about the future of the camels.

The talk then turns to other matters that have emerged from the meeting. There are feral (wild) cattle loose on the reserve and, unless a brand is obtained, they may be lost or stolen. Ross agrees to apply for a brand in the name of the land trust. Next an issue arises concerning the local government people. It appears that a branch of the Northern Territory government is suggesting that communities put themselves under its auspices, to facilitate the provision of such services as sewers, garbage disposal, and water. The complaint is that the local government has taken its proposal to the local community, most of whom are not traditional owners but rather residents prior to the legislation being enacted. The traditional owners object to not having been consulted about these plans. Ross agrees to arrange for another meeting in which the government representatives can put foward their proposal.

The gathering seems about to break up, when a recent arrival speaks up. It is Wenton, the elected chairman of the CLC. He talks at length, partly in English and partly in his native language, occasionally sparring verbally with a couple of the more vociferous local owners. I have great difficulty following the gist of what he says. Ross explains to me later that Wenton is exhorting the owners to support the CLC; he is up for re-election in a few months.

As we prepare to leave for Alice Springs, Ross is handed some drawings by a middle-aged white couple who have sat through the meeting. They operate a kiosk, in partnership with the Aboriginal owners, at a nearby scenic spot which attracts busloads of visitors. They wish to construct a picnic shelter, using local materials and labour, a venture which they feel will enhance the profitability of their operation. It is agreed that the plans will be examined and discussed later. Ross tells me that for the first time this year the kiosk has shown a profit, of which the Aboriginal owners' share was $1200.

On the drive back to Alice, Ross and I talk about the way in which the land rights legislation seems to have divided the community, and to have created a schism between those Aborigines who are owners and those who are not. I recall similar differences that have developed among various native groups in the Canadian North, and how effectively outsiders can use such disagreements to manipulate the native people. In Ross's view, however, the separation of various Aboriginal groups from each other is not a result of the act; rather, the recognition of Aboriginal land ownership has merely highlighted divisions that already existed between groups and families. He believes that the problems that are arising are common to all sorts of communities, and that they must be worked out by the people themselves.

Hermannsburg Mission
29 May

After a long and very dusty drive over bumpy single-track dirt roads, we arrive at the village or "mission" of Hermannsburg. Here the Lutheran Church holds a lease over about 1470 square miles of land, for the purpose of caring for, protecting, maintaining, training, and educating Aborigines. Mr Justice Woodward had anticipated that this land, like other mission leaseholds in the Northern Territory, would be given back to the Aborigines following the land rights legislation. Ross and I chat with the mission manager, who tells us that the Lutheran Church has operated the mission for over a hundred years. Attempts to turn over management of the store to local blacks have been a dismal failure, partly because they lack the necessary skills, and partly because blacks working in the store are under tremendous pressure from their relatives to give provisions away for free.

He explains that one of the early heads of the mission had strongly opposed the initiation rites and other ceremonies then being carried out by the Aborigines, and for many years it appeared that these practices had disappeared. But a few years ago one of the mission staff was sent away to the University of Queensland, where he studied with an anthropologist who had spent many years with Aborigines. The insights gained by the staff member radically altered the church's approach to the community, and better lines of communication were established. The church learned that traditional ceremonial life was in fact still very active — it had simply gone "underground" for decades as a result of the church's disapproval.

It was also learned that many families wished to return to the bush, rather than to live in crowded conditions in the settlement. With assistance from the government's decentralization or "outstation" movement, groups have been encouraged to return to their own country in the Hermannsburg area, and the return to the land has created a greater sense of psychological well-being among the people.

Attempts have also been made to respond to the special housing needs of blacks. European-type houses designed and constructed without any participation by the eventual black owners have proved a disaster in the past: houses designed for a family of five have been quickly overrun by relatives and fallen into disrepair. If the house is built by the eventual owner, however, he is then able to restrict who comes to live there. A further, more particular housing problem arises from the death of an inhabitant. Under Aboriginal custom it is forbidden to remain in a place where someone has died, and a house is therefore abandoned following a death in it. The church's solution has been to design houses on skids, so that the house can be moved after a death.

Our discussion with the mission manager turns to the land rights legislation. The Lutheran Church, we are told, objected to the scheme of the legislation. The church felt that the role of the land councils was improper, since Aboriginal society is very individualistic and anarchistic and is opposed to any system in which the authority to deal with the land lies elsewhere than with the traditional owners. Therefore, the church has been involved in protracted negotiations with the government in an attempt to work out a special arrangement for this land that would exclude the Central Land Council.

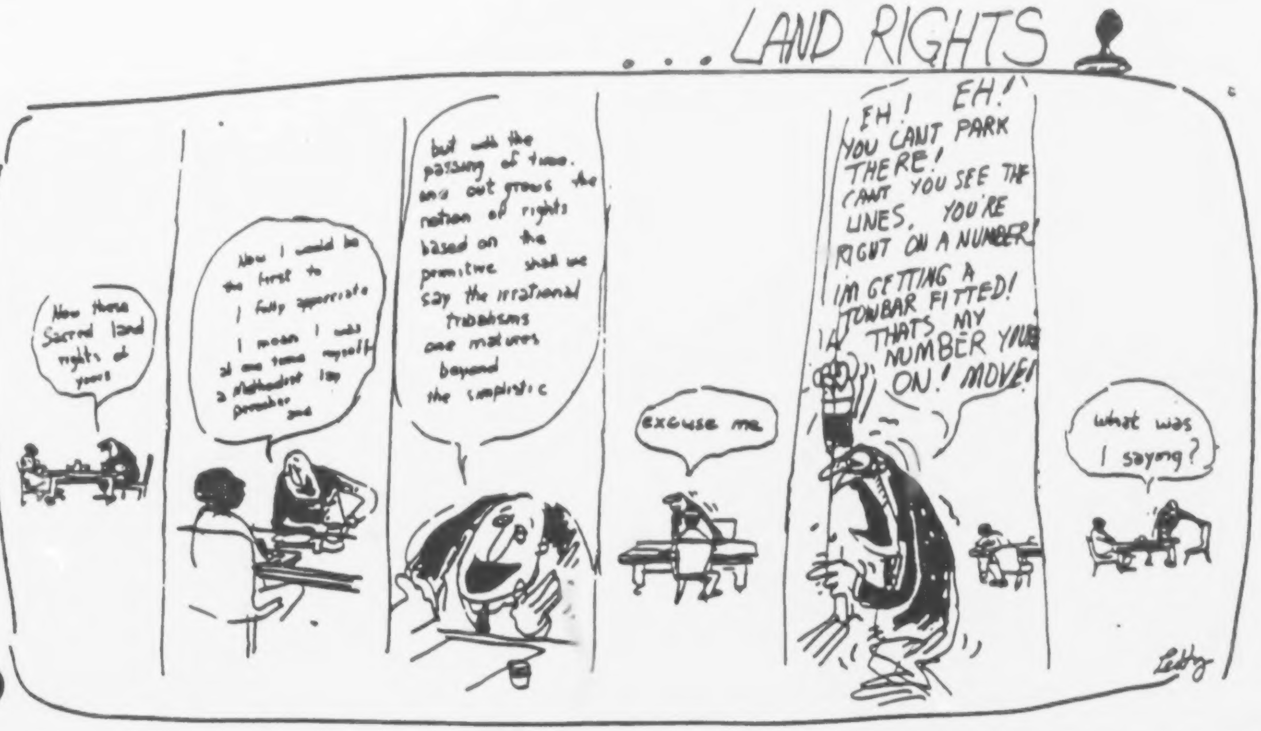
We leave the mission office for a visit to the store and wander around the community. It is reminiscent of pictures of wartime concentration camps: all windows in the store, the school, and other service-related buildings are encased in wire mesh, and barbed wire fences are everywhere.

Areyonga
29 May

Another two hours pass along dusty, increasingly bad roads. We are struck by the immense isolation of the area we are in, rarely seeing any signs of other inhabitants except cars deserted by the roadside, totally stripped of all functional parts. Occasionally a wild donkey is sighted ambling across the flat land. A sign announces that we are entering Aboriginal land, and that no "grog" is allowed. Suddenly we are very conscious of the permit to visit the community that Ross has procured on our behalf from the Areyonga Council. It states that the purpose of our entry is to visit Neil Bell, a local school teacher, and warns that the permit "must be carried at all times while the holder(s) are on Aboriginal land or seas adjoining and produced for inspection on demand."

The streets of the village of Areyonga are deserted as we drive past the first houses. Nor is there anyone in the council office, where we have been told to check for directions to Neil and Faye Bell's house. We sit down in the sunshine and have barely started our lunch when suddenly the place comes alive with people and vehicles. We are escorted down the road to the teachers' house. The Labour Party candidate in the upcoming Northern Territory election, Neville Perkins, one of two blacks sitting in a nineteen-member Assembly, has just dropped by as part of his airborne tour of his riding. He is only the first of a constant stream of visitors of both races which seems to flow constantly in and out of the Bell household.

Both Faye and Neil are trained teachers, with many years' experience in "the outback." Neil speaks Pitjantjatjara, the local language, as does their twelve-year-old son. Faye, who has abandoned teaching


. . . LAND RIGHTS
Now these Sacred land rights of yours
Now I would be the first to fully appreciate I mean I was at one time myself a Methodist lay preacher and
but with the passing of time, and out grows the notion of rights based on the primitive shall we say the irrational tribalisms one matures beyond the simplistic
excuse me
EH! EH! YOU CANT PARK THERE! CANT YOU SEE THE LINES, YOU'RE RIGHT ON A NUMBER! I'M GETTING A TOWBAR FITTED! THATS MY NUMBER YOU'RE ON! MOVE!
what was I saying?
Pedley

Reprinted from Kimberley Land Council Newsletter
Vol. 1, No. 2, August 1979

because she is distressed at the negative effect the education system is having on Aboriginal culture, is in the process of completing a graduate degree in anthropology. They are in the bush because of "job satisfaction." Like many white people who have moved to northern Canada, they have become deeply committed members of the local community in which they have chosen to live. Their concern about the impact of European values on the native culture and lifestyle has led them to question seriously the very system they were originally hired to promote.

As the day goes by, we have a tour of the surrounding area and meet many local people. The main settlement is located in a long narrow valley which the Aborigines believe to be inhabited by very strong spirits. Traditionally, only the strongest of the elders visited the valley, because it was felt that others would be incapable of coping with the spiritual forces there. A camp has long been established on a plain outside the valley, consisting of several shacks constructed with corrugated tin. It is here that people like to spend much of their time, particularly in the late afternoons and early mornings and in the winter months, when the sun is slow to creep into the valley and the air is damp and chilly. Men and women's "museums," holding objects and artifacts related to secret ceremonies, have been built near the upper camp, hidden off in the bushes.

Even now, Faye tells us, the valley is considered to be a place of bad fortune. Ill-health and early deaths are commonplace. Within the past year, the chairman of the local council has lost two children, both talented young adults — this misfortune has driven his family away from the community to Alice Springs. I am struck by the similarity between the history of Areyonga and an Indian village in the Havasu Valley of the Grand Canyon, which was characterized by the struggle of its inhabitants to gain control of the flat land above the valley, where they had traditionally spent their winters prior to the establishment of Grand Canyon National Park.

Despite the problems of Areyonga, the Bells are of the view that for Aborigines it is vastly superior to Alice Springs. Alice is very racist, they say, and blacks are gradually being driven away from all those places in the town where they like to pass time, such as the open green spaces. Faye thinks Alice is such an alienating place for blacks that they resort to drinking and violence when they visit it.

Alice Springs
30 May

Wandering down the main street towards the laundromat in the early darkness of the evening, I am approached by a black of about forty-five. We chat on our way through town, as he shares with me his dreams of riding one day in the Calgary Stampede. Like many Central Australian blacks, he is an accomplished horseman, having spent years working on cattle stations. We stop to visit with one of hi mates. I am suddenly aware of stare directed at me by white passers-by. My black companions caution me against walking by myself at night in Alice — it's not a safe place for a young woman to be. We shake hands and part, and I set off to the "safe" presence of some white friends.

Urapunga
1 June

A hand-painted sign on the porch of the rambling ranch house proclaims this to be "The Bushman's Retreat." Urapunga is a large cattle station run for many years by Ray and his family. They have established a modest tourist operation to compensate for poor beef markets, and are now hosts to the six of us who make up the party of Mr Justice John Toohey of the Northern Territory Supreme Court, a former Perth barrister who is now the Aboriginal Land Commissioner. I have been invited along to observe the hearing of a claim to the Limmen Bight area presented by the Northern Land Council on behalf of the traditional owners. The hearing will start the next day in Ngukurr, a nearby village.

In addition to authorizing Aboriginal ownership of reserve land, the Northern Territory land rights legislation has established a procedure whereby claims to other lands can be presented and consid-

Mr Justice John Toohey hearing evidence from Aboriginal witnesses in the Limmen Bight land claim hearing.

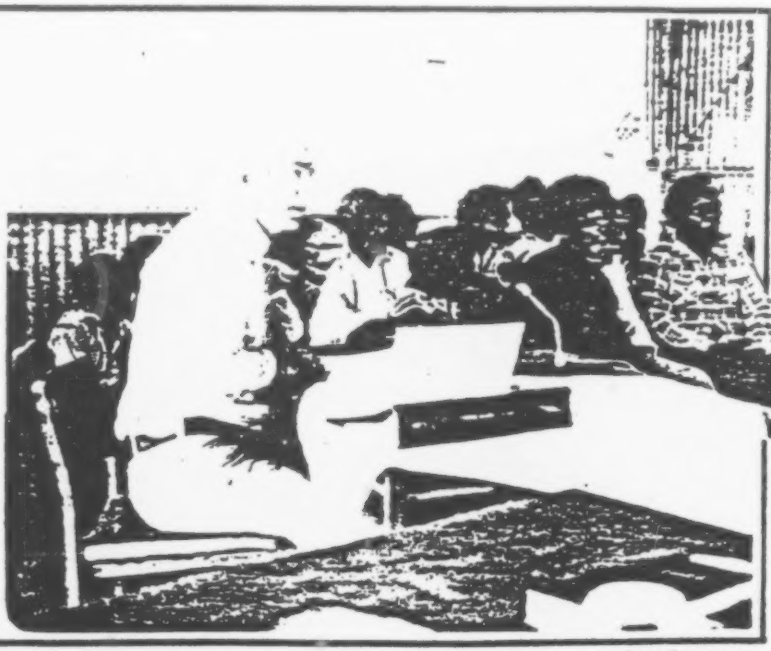


Photo: Graeme [illegible]

ered. This system reflects Mr Justice Woodward's view that a formalized, judicial type of proceeding for the validation of land claims might help to convince opponents of land rights that the Aboriginal claims were legitimate. Claim books are prepared by land councils on behalf of traditional owners, defined in the legislation as a local group of Aboriginals who "have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land," and who "are entitled by Aboriginal tradition to forage as of right over that land." The Aboriginal Land Commissioner is required to submit a report and recommendation to the Minister for Aboriginal Affairs, who then issues a report in which the claim is either accepted, accepted in part, or rejected. The dozen or so claims heard so far have had mixed results. The processing of several claims has been delayed by resort to the courts on jurisdictional matters, launched by interests opposing the claims, most often the Northern Territory government.

Ray chats with us in the garden. Upon learning I am from Canada, he inquires whether we "still shoot Indians over there." (I have been told that the last recorded massacre of Aborigines by whites in Australia took place in the late 1920s.) He shares with us stories of expeditions in which he has participated, sponsored by the Australian National Museum, to record the presence of sacred sites in the Northern Territory. On one such trip, after slogging through very rough country for many hours on a blistering day, the blacks in the party, talking among themselves, suddenly decided that the destination wasn't really very sacred anymore: so the party turned back.

Ngukurr 2 June

Driving into the town where the hearing will take place reminds me deeply of visits I have made in summer to small Inuit communities in Canada. The village is spread out, with houses scattered here and there, the church and rectory set apart on a scenic knoll, and people gathered in small groups in front of the council office and the store. Many are barefoot and the women are dressed in brightly patterned cotton shifts and skirts. Little children, many not clad, romp in the schoolyard with packs of dogs. The people seem friendly and curious, greeting a white stranger on the road with a cheery "G'day" or "Nice morning, isn't it?"

The hearing will take place on a cement pad which is roofed and partially sided with the ubiquitous corrugated tin. As we set up the equipment, a woman moves dust around the floor with a broom. There is much shuffling about of tables, chairs, benches, and platforms, as those in charge of the recording equipment and the proceedings try to ascertain the best arrangement of accoutrements. The witnesses should not feel uncomfortable, but there must be chairs for some of the elderly, and microphones have to be set up near the display of maps that will be used to point out the claim areas. The lawyers and anthropologists have all arrived and their maps and briefcases add to the confusion. For me it is reminiscent of the scenes which accompanied many sessions of Berger's Mackenzie Valley Pipeline Inquiry in northern Canada. The judge's associate, Graeme Neate, caustically remarks to me that the arranging of furniture for the white consultants is in many ways more ritualistic than for the black witnesses. The land council's solicitor comes over to suggest that I claim a chair while one is free, since they are usually in short supply.

The witnesses and the local audience gradually drift in. The old men sit together on the floor in the back of the room, puffing their enormous pipes and staring out from dusty broad-brimmed hats. A hot wind sweeps in through the open areas, scattering the consultants' notes and papers into the dust and sending everyone scrambling. Flea-ridden dogs appropriate spots in front of the judge's table, where they vigorously scratch every inch of their skinny hides. Amid the clamour of crying children, a buzz of conversation, and the roar of a bulldozer passing by on the road, the hearing is declared to be in progress.

Justice Toohey has told me that the current claim appears to be one of the most straightforward to come before him. It is generally agreed that the land at issue has rather little economic value. The main opponents to the claim are an association of commercial fishermen who use the coastal areas, and some citizens from Katherine — a white town to the west of Ngukurr — who have used the coast for recreational pursuits. Katherine has a reputation for being a "red-necked" place, having spawned such organizations as "Rights for Whites," "One Nation, One Law," and, according to some commentators, even an embryonic chapter of the Ku Klux Klan.

The Northern Land Council has retained two barristers to present the claim. One is an elderly QC from Sydney with a long experience in labour matters, who has been involved in earlier claims. The other is one of the two black lawyers in Australia. They are flanked by the three anthropologists hired by the land council to prepare the claim book for the traditional owners. Justice Toohey is also advised by an anthropologist and by counsel.

The claim involves four distinctive clan groups, and the first comes forward *en masse* to give evidence. Of the fifteen or so owners who are present, only some are currently resident in Ngukurr: many have moved elsewhere, but are still recognized owners because of their descent and participation in certain ceremonies. The group varies widely in age and sex: it includes a part-Aboriginal man who was sent away as a child to a church school, and who has meanwhile become a sophisticated and successful businessman. All are asked if they will "speak true," and murmur their assent.

One man of perhaps thirty years is the spokesman and, in response to questioning, he begins to point out the boundaries of his country on a map. He becomes slightly confused at times, and is prompted by other clan members who speak to him in their native language. He relates "dreamings" of his country — how particular creatures of Aboriginal mythology have travelled over and had adventures at various spots, those places now being sacred sites. Other clan members step forward to answer certain questions. A very elderly man is brought up to point out particular places on the map, but has great difficulty. Someone tells me he is nearly blind. Although the witnesses seem to have a deep knowledge of the country they are describing, many become disoriented when they try to relate their knowledge to places marked on the map. I am reminded of a comparable situation in Baker Lake, Northwest Territories, a few years back. As a staff lawyer to the Inuit Tapirisat of Canada, I had participated in a similar attempt to help local people delineate on maps their most important hunting and trapping areas. Occasionally, members of the clan disagree with what another has said, and they break into the native language among themselves for a few minutes.

During a break, one of the anthropologists tells me that the people are very nervous: they have been carefully briefed beforehand, but are still upset by a style and procedure which, although informal by white standards, is alien to them. There are those who criticize the legislation because it has engendered this process which is costly, time-consuming, elaborate, and above all embarrassing to the Aborigines who are reluctant to speak in public about "their country." One of the ways in which religious attachment can be established is by reference to particular ceremonies; however, sometimes Aboriginal tradition demands that these be discussed only in sex-segregated enclaves. At times other taboos, such as one that prohibits using the name of someone who has recently died, make it an extraordinary chore for the lawyers to elicit adequate evidence. Someone tells me that in an earlier claim, in which some of the current participants were involved, Justice Toohey was invited to watch certain land-related

Aboriginal witnesses indicating sites of significance and tracks of Dreamtime creatures on a map of the Limmen Bight claim area.

Photo: Graeme [illegible]

ceremonies, as an indication of ownership. This is an invitation rarely extended to outsiders; and since part of that previous claim was not allowed, some of the current participants have refused to permit the carrying out of ceremonies before the judge in this claim.

In a tortured and sometimes monotonous fashion, information about these claimants' notion of ownership is gradually unravelled. Though I have often read about the system that exists, I have never really been able to comprehend it. After listening to the witnesses for many hours, I feel that at last I am beginning to understand a little about some complex concepts that make Anglo-Canadian theories of ownership seem like child's play. A simplified version is that there are two classes of interested people connected to a clan. The first are the *nimaringki*, who are the "owners" as a result of certain lineal descent. The others are the *djungkai* or "managers," who have responsibility for the care and maintenance of the land, and who are active participants in traditional ceremonies. A battle has raged among Australian anthropologists concerning whether both groups should be recognized as traditional owners under the act. What has emerged in the process of several claims is the fact that patterns of ownership and descent vary from place to place and group to group, and that there is no blanket solution to the debate that seems to fit all circumstances.

In the case before us, the issue had been squarely raised in the claim book, although the Northern Land Council has declined to put forward an answer. The early questioning of the first clan has suggested that only the *nimaringki* ought to be formally listed as owners. Suddenly an articulate young woman speaks up from the clan group in disagreement, asserting that both groups should be included. In response to Justice Toohey's probing, she points out that ceremonies can only occur with the consent of the *djungkai*, who make decisions about what dances and songs will be included and what designs will be painted on the bodies of participants. Justice Toohey looks perplexed: it is a thorny and contentious matter, and much will ride on his ultimate recommendation to the minister.

A second clan group is called in the afternoon; their evidence comes out in a garbled and confusing morass. Justice Toohey's consulting anthropologist scowls at the questions put by the land council lawyer — they are in highly abstract conceptual terms, and many of the answers indicate that the question has been misunderstood. The judge's months of experience shine through as he occasionally helps the lawyer out of a difficult situation by rephrasing a question in language that the witnesses seem easily able to comprehend. Frequent pauses are required in order for the anthropologists to provide the spelling of Aboriginal place names for the judge and for the sound recorder. To make matters worse, individual clan members suddenly begin to identify specific and diverse sites as "their country," rather than the larger area being claimed communally. With everyone's nerves ragged and on edge, Justice Toohey adjourns the day's proceedings early.

The scene at the residence of the land council staff is one of dejection. The lawyers complain that, despite three days of painstaking work with the witnesses, the people have still managed to come up with the wrong responses to key questions. There is frustration because the anthropologists keep making suggestions to the lawyers about what questions to ask. More relaxed after a cool beer, everyone settles down to try and figure out how the mess of the day's proceedings can be remedied in the morning.

Ngukurr
3 June

Sure enough, the next day the evidence comes out much more smoothly. Everyone seems refreshed. The witnesses are more comfortable with the setting and procedures that had initially seemed so foreign to them.

Rumours have been floating around Ngukurr that the Chief Minister of the Northern Territory, Paul Everingham, will be flying into town. It is only a few days until the territorial election and some are predicting that his Country Liberal Party (CLP), currently in power, is in jeopardy because it is viewed as being anti-Aborigines. The competing Labour Party is considered to be more sympathetic to black issues, and there is speculation that the rural black vote may succeed in swinging the election in favour of Labour. Having seen the electoral maps, I am dubious: the urban, predominantly white centres have been divided into several constituencies in combination with remote rural settlements, thus blunting whatever impact the collective black vote might have had. Moreover, large numbers of blacks have not been registered to vote, since the few days available between the announcement of the election and the closing of registration made it impossible for people in the outback to register in time. For the first time, however, there have been significant reforms made to the actual voting procedures. In the past, some believe, blacks on cattle stations were coerced into voting in accordance with the wishes of cattle station owners, since the owners were the only people available to point out the names of candidates on the ballot to their black employees who knew no English. This time, mobile polling stations will fly into remote areas, ensuring some privacy in the voting process.

The Limmen Bight claimants are also apparently traditional owners of land included in the nearby St Vidgeon's cattle station, a large area which cannot be the subject of a claim before Justice Toohey because it was alienated by the Crown by lease prior to the enactment of the land rights legislation. Some believe that Paul Everingham is going to promise the cattle station to the Ngukurr people right under the nose of the Aboriginal Land Commissioner, in order to secure the local black vote.

In the mid-afternoon, I wander down to the store to check on the fate of the plane that is to take me back to Darwin; it has broken down while landing at the airstrip. A large crowd has gathered by the school, listening to speeches by Everingham and the CLP candidate who is the sitting member for the area. I arrive too late for the St Vidgeon's pitch, which is that it will be made available to the Ngukurr people if it can be shown to be a "viable proposition". some of the land council staff consider this to be a worthless offer, since the station has never proved economic for cattle since its establishment.

Now CLP people are handing out a campaign booklet entitled "Keep the flag flying," embellished with a photo of the Chief Minister on the cover. The only reference in the nine-page booklet to Aborigines (some twenty-five percent of the Northern Territory population) is to a five-year programme to provide services such as electricity and water to Aboriginal communities, in order to "eradicate inequalities."

The Chief Minister hangs back in the shade of the buildings while the local member faces the somewhat hostile crowd standing in the sunshine. Promises are made to improve the road to Katherine, and to develop a school system in Ngukurr that will enable teenagers to pursue a higher education without having to leave their home community. Several people complain about the Chief Minister's policies, and the campaign booklet is criticized because it is written in English that people cannot understand.

Checking with the local airline company about the likelihood of getting back to Darwin that day, I am told that a mechanic is being sent out to repair the plane. Several hours later, the repairs apparently completed, we leave Ngukurr for Katherine where we will have to stop for fuel. After landing, we learn that there is no jet fuel available in the town, and that no one had radioed ahead to ensure that our unscheduled plane could be refuelled. Though less than delighted at the prospect of spending the night in Katherine, my experience with flying throughout remote parts of northern Canada stands me in good stead. The other passengers appear to have been through similar experiences too, so we relax in the terminal building with an air of resignation. Suddenly a phone rings, fuel appears from somewhere, and soon we are off for Darwin, only seven or eight hours behind schedule.

Darwin & Sydney
4 to 12 June

Over the next week, I interview a variety of people in the urban centres of Darwin and Sydney, attempting to find out how the land rights legislation has affected individuals and companies with interests in the Northern Territory.

Much of the territory has been blanketed with "pastoral leases," and cattle stations of varying sizes have been established on these lands. Frequently, small groups of Aborigines are found living on the stations. Pastoralists are concerned about the amount of land coming under Aboriginal ownership through the claims process, and the problems that this may pose in terms of management of range land and disease control. Difficulties have also been encountered at cattle stations that border on Aboriginal land. Often the topography of the land makes fencing impractical; yet if an animal crosses onto Aboriginal land, it may only be retrieved by the owner after he has obtained permission to enter from the local council. This procedure is frequently more trouble than it is worth, and it is considered unfair that one set of land laws applies to white-controlled land and another to Aboriginal land.

The greatest difficulty perceived by mining interests is the uncertainty created by the land rights legislation. Since there is no formal cut-off date for the lodging of land claims, it is impossible to know exactly when the land ownership picture in the Northern Territory will be clarified. Some view the act as contradictory in that, although Aborigines do not own the minerals beneath their land, in many situations they will have the power to veto any mining activities undertaken there. There is also discontent with the fact that they seem entitled to negotiate royalties for minerals developed beneath their land; this additional economic factor makes it impossible for mining companies to project the economic viability of particular deposits. Some lobbyists seem convinced that they will be able to persuade the Commonwealth government to amend the act in accordance with their wishes — notwithstanding the fact that the industry barely participated in the Woodward inquiry, and that some affected companies have not bothered to appear at hearings before Justice Toohey. There is also some feeling that the claims process is weighted in favour of the claimants, for companies are having great difficulty finding anthropologists who will help them attack the validity of the Aboriginal evidence.

Over the next few days, the results of the Northern Territory election gradually filter in from the bush. Everingham's government has been returned, with almost no change in the *status quo*. The "sleeping" black vote has failed to materialize for the Labour Party.

In South Australia, representatives of the Pitjantjatjara people have been negotiating with the state Labour government for the enactment of land rights legislation. Rumours imply that, from the Aborigines' viewpoint, it will be a major improvement on the Northern Territory legislation.

In Western Australia, the Premier, Sir Charles Court, announces that he will provide protection for oil company employees attempting to fulfil their drilling obligations on a mineral lease on the Noonkanbah cattle station, where the surface rights are held by Aborigines. This announcement comes on the heels of press reports that local Aborigines have held company surveyors prisoner for several hours on the station.

In New South Wales, a Select Committee of the Legislature on Aboriginal Affairs is about to issue its first report, dealing with Aboriginal land rights in the state. A staff member, Australia's other black lawyer, tells me that the Northern Territory legislation was designed for the mining companies. Proposals in New South Wales will include sub-surface ownership for Aboriginal lands, and a claims process in which blacks would participate as decision-makers with the power to issue binding solutions to claims.

In Queensland, the North Queensland

Land Council has organized a "counter-conference" against the Second International Wilderness Congress taking place in Cairns. This is to protest the lack of involvement by blacks in the congress, which has been heavily funded by government and industry. The counter-conference receives wide press coverage, and much is made of the fact that one of the key black participants in the official congress has walked out of it in favour of the counter-conference.

Some concluding observations

Australia is a land of contradictions. It is a country where knighthood is still in fashion, and where barristers wear silly white wigs perched on their heads, but where judges go on fishing trips with junior solicitors and make widely-publicized speeches about controversial social issues. It is also a country where centuries of overt racism seem only lightly buried beneath the surface — yet where, by North American standards, very radical directions are being pursued in the field of land rights.

In Canada the federal government has decided to resolve the land rights issue through negotiations with native people. In Australia's Northern Territory (and now in some of the other states), the approach has been to enact legislation, following some form of formal inquiry or review by disinterested parties. In the Yukon, negotiations have gone on for eight years. In contrast, in Australia's Northern Territory, Aboriginal ownership of some twenty-six percent of the land mass has been formally recognized in a period of seven years, with other areas under consideration. This is not to suggest that speed in resolving the land rights issue is necessarily a priority; but the recognition of land rights in the Northern Territory has given a legitimacy to Aboriginal claims and given them a major role to play in the future of the territory.

True, there are many tensions. The land rights legislation has proven no panacea for the problems of health, education, and alcoholism among the Aboriginal people. Some feel that the legislation is creating even greater rifts between the races, and exacerbating the deep polarization that already existed. Others argue that its uncertainty is driving business investors away from the territory. Yet despite all the pushes and pulls, one senses that a commitment has emerged to stare "the problem" in the face, and to try and do something about it. The coming to terms with a new order is proving traumatic for many of those affected; and there is still a nagging fear that this is too little, too late, to salvage the wreck of a people who are both proud and gentle, and who share a kinship with their harsh environment in a way that outsiders can barely glimpse.

Nevertheless, the recognition of land rights has the potential to shift the balance of power in Australia. Already the Aboriginal Land Rights (Northern Territory) Act is having an enormous spin-off effect in Australia's southern states, where in many ways the problems are much more complicated as a result of the urbanization of blacks, their loss of cultural identity, and the lack of available land with which to respond to their claims. Highly visible land rights organizations have sprung up across the nation; and, as recognition is gained in South Australia and New South Wales, legitimacy will be added to the claims of those in other states. This flurry of activity in a country where, in 1971, the High Court rejected the notion of Aboriginal rights, is nothing short of remarkable.

Land rights in Canada

What does all this have to say to Canadians? For one thing, it suggests to those Canadians who would like to think otherwise that the land rights movement in this country is unlikely to fade away. The ease of modern communication and transportation enables our native leaders to be knowledgeable about comparable developments in other countries. Indeed, two representatives from the Native Council of Canada attended and participated in the Canberra land rights conference. The Inuit Circumpolar Conference and other similar international associations of indigenous peoples have been established, and are facilitating the sharing of common experiences. Developments like those in Australia's Northern Territory may serve to heighten the expectations of native negotiators in this country. Moreover, we should not be surprised to see increased international pressure for Canadians to put their house in order. Pressures towards the recognition of the rights of indigenous peoples are world-wide, and we should not expect to escape them ourselves.

The speed of events in Australia should lead us to question the wisdom and effectiveness of the negotiating process that has been pursued by our federal government. One senses that much of the public support for the position of Canadian native peoples has been lost through the passage of time, by the apparent lack of progress towards resolving the conflict, and, perhaps most seriously, by the hardening of the energy situation. Arguably, some of the lack of progress can be ascribed to native organizations themselves, which have sometimes appeared directionless, self-divided, and lacking in concrete proposals. On the other hand, although the federal government has been a generous financier of the claims movement, it has failed to give the matter priority.

Australia's Northern Territory legislation provides us with a method of resolution that, at the least, has enabled Aborigines in the Northern Territory to become involved in the growth of the territory. By contrast, the building of highways and pipelines, the establishment of mining projects, and dramatic increases in the rate of offshore hydrocarbon exploration in northern Canada are all occurring in the absence of a defined role for native peoples to play as land-owners. At some point, surely the land claims movement becomes academic, for all that natives had hoped to achieve through land claims by way of control over their land and involvement in decision-making will have been lost. It is difficult to assert categorically that a process which seems to have accomplished a great deal in another country is necessarily the best path for us to follow; but the success of the Australians in establishing the framework for a radical shift of power in the Northern Territory raises doubts about whether we in Canada are doing everything that is possible in the North.

Finally, Australia's Northern Territory legislation shows us that there is a system that involves direct ownership of land by natives, but that will not necessarily lead to a shut-down of resource development. It is true that some developers believe the legislation has created uncertainties and has had a negative effect on economic development in the territory. Nevertheless, there are examples of areas where native owners and developers have succeeded in overcoming their differences, and have reached a compromise that both groups can accept. Some tensions and conflicts are an inevitable result of a reordering of power in a society; but a look at a place where, despite dire predictions to the contrary, the shift seems to be working should encourage us to seek a resolution to the issue in Canada.

NOONKANBAH: Aborigines v. Mining companies

The *Kimberley Land Council Newsletter* of April 1980 reports continuing conflict between development interests and the Aborigines at the Noonkanbah cattle station:

"Thirty different mining companies and individual prospectors have pegged out a total of 600 mining tenements. Preliminary mining operations have seen sacred boards destroyed or stolen, burial sites bulldozed, etc.

The Yungngora community is desperately and steadfastly fighting this intrusion on their land. They have only recently (since 1976) established their independent community after a long history of struggle against European control and the demoralizing effects of fringe dwelling in the nearby town of Fitzroy Crossing.

After a year long battle in 1979, the community managed to temporarily avert drilling operations by Amax [Petroleum] on a significant sacred site. The community called for a three-year moratorium on mining to allow them time to establish themselves independent of the destructive influence of mining on their land. The W.A. [Western Australia] State Government is, however, insistent on mining occurring early in 1980. Already C.R.A. have begun their search for diamonds in the north of the station . . .

The Government has resorted to several means to try and override Aboriginal opposition to mining at Noonkanbah, in what appears to be an attempt to open up the State to unimpeded mining activity and deprive Aborigines of any claim to rights over their land. The *Daily News* (3/4/80) reported that ever since Aborigines at Forrest River Reserve negotiated directly with mining companies seeking to enter their land, the W.A. Government has had a policy that mining companies must not negotiate direct with Aborigines.

The conflict at Noonkanbah has brought the issues of Aboriginal sacred sites and land rights to the attention of the public as never before. The Government has attempted to defuse the growing support for Noonkanbah by distorting Aboriginal statements and spreading false rumours. There has been a sustained campaign accusing Aboriginal people of wanting royalties, of being manipulated by whites, and of using violence against construction workers at Noonkanbah.

The falsity of these stories about violence has been well substantiated, with Aborigines at Noonkanbah remaining remarkably controlled in the face of damage to their sacred areas; this has already started with the sinking of a water drilling hole near Pea Hill.

The violence in fact has come from Amax and the Government in the form of the provocative and intimidating police presence at Noonkanbah. Police were used to force the start of work at the No. 2 drilling site. The work on this site was later found to be illegal during the hearing of an injunction preventing further Amax operations – the Museum had not yet been directed by the Government to approve drilling on the No. 2 site.

The police were used again a few days later to assist the water drillers to sink their holes into the sacred area. The use of police on this occasion was justified on the basis of trumped-up accusations of Aboriginal violence against the contractors. The police remained at Noonkanbah until Amax and its operators finally conceded defeat and withdrew on Thursday 3rd April.

Sir Charles Court [Premier of Western Australia] has accused some Aborigines of showing signs of raw racial hatred; he said this was the result of ideological penetration and manipulation. There have been many such hysterical cries accusing whites of manipulating Aborigines; this paternalistic attitude is a gross insult to the Yungngora people who walked off their station and lived in appalling conditions at Fitzroy Crossing in order to regain their land and run it themselves without the interference of a white manager.

The royalty debate has also been launched on the basis of wild allegations and distortions. The Government has tried to create the idea that royalties is the key issue at Noonkanbah, and has sustained this story for weeks, despite numerous denials by the Aborigines concerned . . . . Aborigines at Noonkanbah remain adamant that it is the land which is important and it is not for sale . . . .

The Government will need to deploy a massive force to overcome this opposition and the Noonkanbah people's determination. They have already tried and failed on numerous occasions over the past year.

The Kimberley Land Council calls on all people of good will to assist the Noonkanbah community in working towards what may be an historic victory."

Walyangamardiki

(The Land My Mother)

Of all the relationships traditional Aboriginal man has with anybody, or anything, the most important is that which binds him to a particular tract of land which he refers to as his 'country' . . . .

The Commonwealth Government acknowledges the bond under the provisions of the Aboriginal Lands Rights (Northern Territory) Act 1976, which defines traditional Aboriginal owners as ' . . . a local descent group of Aboriginals who have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land, and are entitled by Aboriginal tradition to forage as of right over the land' . . . .

It must be stressed that the special relationship that Aboriginals have with the land is not something that was dreamed up or invented by the Aboriginals to make life difficult for the mining companies and Territorians in general.

The basis for understanding this spiritual affiliation is found in the highly complex social organisation of the Aboriginal people.

It is usual to refer to Aboriginal tribes, such as the Aranda or Pitjantjatjara. These groupings are distinguished by a common language, a commonly used name for that language (and thus for the people speaking it) and an identifiable tract of country where those people live or used to live.

It is, however, the clan group which is a local descent group based on family links through a common male ancestry, which usually represents the key unit in Aboriginal social organisation.

Membership of such a clan is determined at birth, and members retain that membership throughout their lives, and indeed thereafter. The rules attaching to clan membership are very strict.

The spiritual relationship between Aboriginals and the land is given emphasis in the belief that for a child to be born a spirit must first enter the mother's womb to give the child life. This is not very far removed from some of our Christian beliefs about the soul.

The spirit derives from one of the various sites associated with the Dreamtime heroes. Consequently there is a direct personal link between the spirit being, the child and the place from which the spirit came. That place is the source of the person's life force and he or she is inseparably connected with it.

The spirit is part of the land and therefore the land is very much part of the Aboriginal.

The relationship is not broken, even on death, as the Aboriginal's spirit returns to the site from which it first came. Nor is it broken by the fact that the Aboriginal may have lived away from the site for many years.

Territorians should realise, however, that under the provisions of the Land Rights Act only Aboriginals who can establish a traditional entitlement to land are eligible to lay claim to land in the Territory.

Aboriginal clans have close spiritual associations with particular sites and tracts of land, the total of which is called an 'estate'. Their religion, or mythology, teaches them that particular areas were given to them, or created for them by their spirit ancestors in the Dreamtime.

Before the dreaming, according to Aboriginal tradition, the land existed but was without shape or life. Then 'spirit beings' or 'Dreamtime heroes' travelled over the land creating the natural environment as it now exists, the physical features and all living things, including people.

These spirit beings also gave the people their own tracts of land along with their languages and social institutions.

Particular features of the landscape are believed to retain part of the spiritual essence of the Dreamtime heroes who created them.

For this reason there are specific stories, songs and ceremonies linking the spirit ancestors with particular places. The more important the place is in mythology the more sacred it is to the Aboriginal.

The land-owning clan has both rights and duties. The rights are for the use of its natural products; the duties are of a ceremonial kind – to tend the land by the performance of ritual dances, songs and ceremonies at the proper times and places . . . .

Because, as I have said, the connection of Aboriginals with their land is timeless, commencing before birth and continuing after death, this taking over of responsibility by another clan should be seen as a form of trusteeship, rather than a transfer of rights.

Traditionally ownership of an estate cannot be taken away, given away, lost or abandoned.

from "Spiritual affiliation of Aboriginals with the land," by the former Commonwealth Minister for Aboriginal Affairs, the Hon. Ian Viner (1978)

Canadian
Arctic
Resources
Committee

Chairman: **Andrew R. Thompson**
Executive Secretary: **Murray Coolican**

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Northern
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NATIVE RIGHTS in NORWAY

IT IS OFTEN EASIER TO UNDERSTAND CERTAIN TYPES OF CONFLICT when they are removed from one's immediate interests. In northern Norway, a conflict involving aboriginal peoples (the Samis or Lapps), hydro-electric power development interests, conservation-minded Norwegians, and the Norwegian government and Parliament has recently gained international prominence. The conflict has many features common to the current Canadian situation. Like Canada, Norway has been ill-prepared in dealing with problems of aboriginal rights over natural resources. Like Canada, too, Norway is considering an approach to these problems through amendment of its national constitution. And the Sami population, like the Inuit in Alaska, Canada, and Greenland, is found in several countries — Norway, Sweden, Finland, and the Soviet Union.

There is an obvious danger, of course, in international comparisons. They tend to down-play the differences in history and political culture that make each situation unique. Certainly Canadians are in no position to pass judgement on the Norwegian situation, and that is not the intention here. But the awareness of similar problems in another country may help Canadians to understand more clearly the dynamics of northern development.

As in Canada, the native rights movement in Norway has coalesced recently around resource development and land use issues. The principal focus at this time is the heated dispute over the development of a hydro-electric dam on the lower reaches of the Alta-Kautokeino waterway in northern Norway. Such hydro projects have been viewed in Norway for many years as undoubted economic assets. However, in the case of this project, the energy gains are arguably slight, especially in the peak-need winter periods when water levels are low. And for the Samis, the regional and cultural costs associated with the development far outweigh any possible benefits.

The Norwegian government, for its part, believes that it has made a conscientious effort to recognize and protect various Sami rights and interests — including those involving the natural environment and wildlife of Samiland. The Alta question has been considered on three separate occasions by the Norwegian parliament, and in fact the original Alta River development plan has been scaled down considerably. The government also established two special committees in 1980 to develop improved educational, language, cultural, and legal rights policies for the Samis. And the government supports the Nordic Sami Institute in Kautokeino through its participation in the Nordic Council with Sweden, Finland, Denmark, and Iceland.

The materials presented in this issue of *Northern Perspectives* outline what many Samis feel is at stake if the present hydro plan proceeds. The lead article has been contributed by two Sami organizers, and the Norwegian Sami Association has provided its history of the Alta dispute. An interview at the end of the issue provides the perspective of a Canadian Inuit leader on why the Norwegian situation is of interest in the Canadian context.

Sami rights and the Alta River

Rune Stormo
Eva Solem

IN THE NORTHERN PART OF SAMILAND, between the Finnish border and the built-up area of Alta, flows a river that has become the symbol of the Samis' struggle for their culture and their land.

Over the centuries the Samis' territory has diminished steadily as a result of encroachment by the nation-states, but in recent years the Samis have felt themselves to be standing with their backs against the wall. If they were to be assured a future with their own culture and language, they had to have an area of land where they could develop their culture in peace, and where they could feel secure.

The Samis have always lived in a society which of necessity maintained an ecological balance with its environment; it was the presupposition for ensuring the life of future generations.

Like most other indigenous populations, the Sami concept of ownership is totally different from that of the rest of the European peoples. In Samiland, the land used to be divided up into small areas which were placed at the disposal of a number of families, or a larger group. Such a group had a collective right to the area, and was under leadership which determined how hunting should be conducted, which animals should be felled, and how they should be divided up between the hunter and the rest of the group. Within its own area, each group practised seasonal migration, determined by the time of year and access to nourishment.

The inviolability of nature was central to the Sami conception of things, and so great was the respect accorded nature in general that the idea of anybody assuming control of parts of it was inconceivable. This is a conception typical of all nature-oriented peoples.

It is therefore a manifest demand on the part of the Samis that land and water within their territory should be administered in accordance with their ecological views, and in such a way that this respect for nature is preserved. In practice this implies that the Samis themselves must be given the right of administration over areas which they have always inhabited, and which they lived in before any other people.

Continued utilization of nature according to customary methods is also a precondition for cultural and social security, and for the continuation of traditional Sami livelihoods.

For the Samis, resistance to regulation of the Alta-Kautokeino watercourse has become a crucial issue. Through the Alta case, the Samis' demands for recognition of their rights as an indigenous people have been advanced with new force. This implies: official recognition and status as an indigenous population; establishment of their own representative bodies; the granting of official status to the Sami language in the fields of administration and education; the right to practise traditional livelihoods in traditional settlement areas; and the right not to suffer expropriation of land, land-rights and natural resources . . . .

Controversy has now raged for many years over the projected damming of the Alta-Kautokeino watercourse in Norway. The Movement against Damming and Sami action groups have pursued a long, non-violent campaign against a damming that is desired neither by the local inhabitants, nor by the Sami organizations.

Norway has the world's highest electricity production per inhabitant, and all that electricity comes from water-power works. Norway also has very considerable oil and gas reserves on the continental shelf. But in spite of all the energy to which it has access, industry is extremely eager to continue extensive development of water-power works.

Since the majority of Norway's watercourses have already been regulated, there is now a major controversy raging as to what the fate of the last surviving major unregulated waterway will be. The power corporations want to develop as many waterways as possible, whereas conservationists believe the most valuable ones must be preserved against hydro-electric development. Norway must be able to afford to allow some of her finest rivers to continue flowing as they have always done.

Alta River

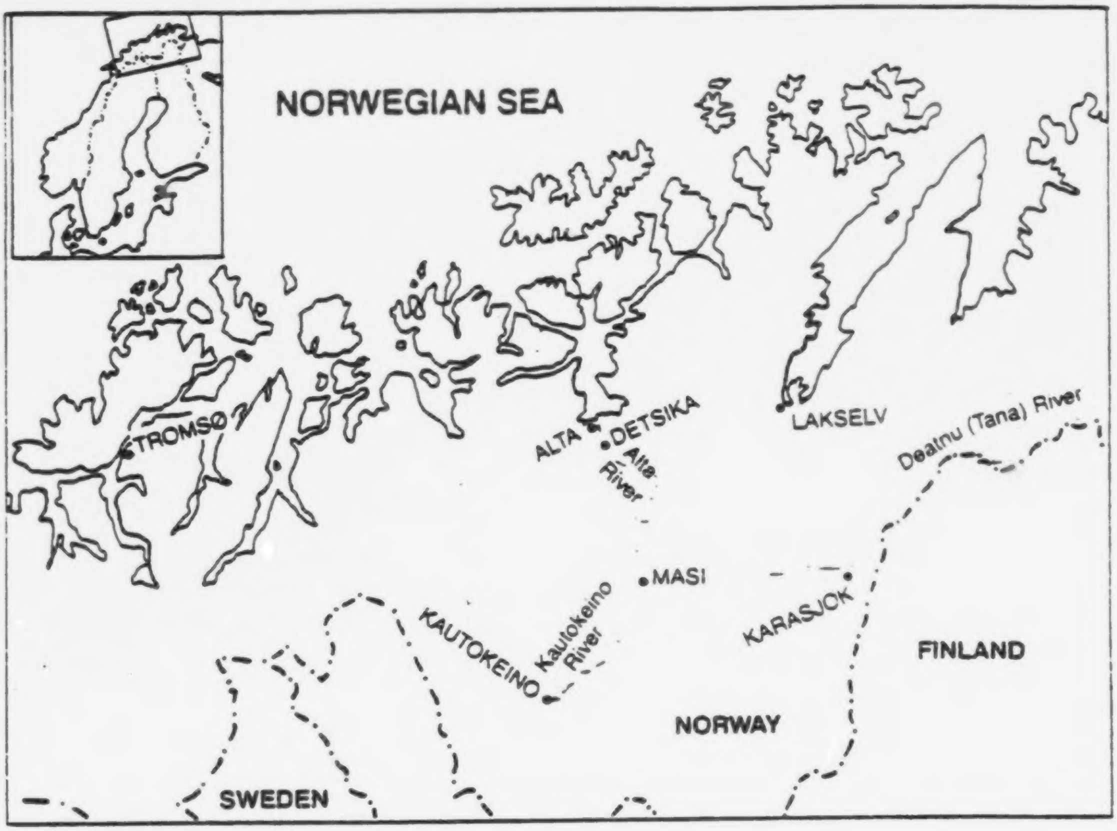
The Alta River is just such a watercourse of special value. The conflict over the river has lasted a long time: never before have people battled so tenaciously to rescue a river. In January 1981, when construction work was due to start, the government was compelled to organize the most massive police action in the history of Norway, and the case has received an immense amount of publicity in the Norwegian press.

Why has the battle over the Alta been so intense? The Alta River is the second largest river in Finnmark, the northernmost county in Norway. And it is here that the most important Sami settlement areas are located. This makes the fate of the Alta River a very significant factor in the current controversies concerning minority groups and indigenous populations. But it is also important with regard to the conservation of natural resources and the environment.

Natural treasures

The Alta River is 170 kilometres (km.) long, and flows both through uninhabited wilderness of unique character, and through the most important populated districts in the region. The river is thus of unusually great importance — for the local environment, the daily life of the inhabited districts, and as a resort and recreation area. In addition, the wilderness plays a vital part in the Samis' reindeer husbandry, berry-picking, and fishing.

Rune Stormo is a member of the Oslo Sami Association (Oslo/Samed Saer v. C.J. Hambros Plass 2, Oslo 1, Norway). Eva Solem is a member of the Oslo branch of the International Work Group for Indigenous Affairs (IWGIA). The article is based on two papers by the authors: Sami Demands and the Rights of Indigenous Peoples and The Alta Dam Project: significance in the context of nature



The river mouth is at Alta, one of the largest towns and most important agricultural centres in Finnmark County. The forty-six-km. stretch upstream from Alta is an excellent spawning area for salmon. In fact the Alta River has become world-famous for the large, fine salmon which abound in it each summer, as well as the magnificent expanse of surrounding landscape. It is an exceptionally fine river for sports fishing and salmon. Each year, twenty to thirty tons of salmon are taken from it, all with rod and line. The majority of the fishermen live locally. Fishing trips on the river are one of the things that make life rich and worth living for the people of this northern region. In addition, the 200 tons of salmon that are taken annually in the sea, but which originate in the Alta River, are of vital importance for the many coastal fishermen.

The landscape along the river is fantastically varied. Forty kilometres from Alta, the river flows through the unique Chaucho Canyon, the largest in northern Europe. Above and below Chaucho, the river flows through fertile valleys which, in sharp contrast to the surrounding plateau, are rich in plant and animal life. The river serves as the nerve of an area with an unusual number of geological, zoological, and botanical rarities.

Power plan

Just above Chaucho Canyon, in a deep narrow ravine, the state power corporation (NVE) plans to build a power plant and a dam 100 metres high. Consequently, the level of a narrow lake six km. above the dam will rise fifteen metres.*

Environmental objections

There are a number of reasons that Norwegian organizations for the preservation of nature and the environment strongly oppose the Alta dam project:

1. The power plant would produce so little hydro-electric power that Finnmark could just as easily get this amount from other areas in Norway. The predicted amount of power from Alta (625 GWh) is only $^{5}/_{1000}$ of Norway's total electricity production. In any case, power lines to other counties with great water power resources are already planned.
2. The dam and power plant are to be built in the middle of a wilderness region which is particularly distinctive and worthy of protection.
3. The salmon stock will be harmed because the river will be polluted during construction of the dam and the power plant. For several years after completion of the regulation, a number of the uppermost spawning areas will lie dry. There will be a greater quantity of water in the late winter, and it will be warmer. Consequently, ice will scrape away more of the salmon roe than normally suffers this fate, and the fry will hatch too early and be unable to survive. The dam will also cut off part of the salmon's food supply.
4. Reindeer herding will be further compressed in a migratory area which is used by 30,000 animals and is already cramped. Traffic, and the very presence of the road which is to lead to the power station, will frighten the animals, and a small but essential area of land, which presently serves as a calving area for 4000-8000 animals, will be flooded. There is a total

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* For technical information on the project write: Norges vassdrags- og elektrisitetsvesen (NVE), Middelthunsgt. 29, N-Oslo 3, Norway; or the Norwegian Department of Oil and Energy (Det Kgl. Olje- og energidepartement), Pilestredet 33, N-Oslo 1, Norway.

of about 200.000 domesticated reindeer in Norway. All available pasture land in the Samis' traditional territory is employed for reindeer breeding, and it is consequently impossible to obtain new land for the purpose.

5. Agriculture in Alta, and in the unique Sami village of Masi, will suffer damage. At a latitude of 70°N, it is only just possible to cultivate the land. The regulation of the river will increase the problems by adding the hazards of floods, ice-masses, and a harder climate.
6. NVE and the government neglected to follow the rules and the law which prescribe how the possibilities of harmful effects are to be investigated before a regulatory construction is undertaken. The case is an important matter of principle, and consequently there is a legal case in progress: farmers, reindeer-owning Samis, salmon fishermen, and Norway's Association for the Preservation of Nature have joined forces against NVE and the government. A final decision on the case will be taken by the Supreme Court.*

Demonstrations

The hydro-electric project was approved by Stortinget (the Norwegian parliament) in 1968. But despite the fact that the case was taken to court, and was still under scrutiny, the government and NVE attempted to start construction. The local population of Alta founded a movement against the regulation just before the case was treated in Stortinget, and this has grown gradually into an organization which is nation-wide. The Movement against Damming has arranged many demonstrations, but is emphatically against the use of violence. Each time NVE has attempted to start construction of a road leading to the area where the power station is to be built, it has been stopped by people who bodily obstruct the machines.

In January 1981, the government succeeded in starting to build the road by collecting together a force of 600 policemen from all over Norway to remove the 800 demonstrators. But it was still necessary to halt construction very soon when it became clear that NVE had transgressed a law which lays down that an area suffering encroachment must first be investigated by archaeologists.

The numerous errors on the part of NVE, and the opposition organized by the Movement against Damming, have developed into an extensive and complicated political game. Sami hunger strikes and other protest actions have also been of great significance.

The Alta struggle

lover?
FETT
2.døgn

Sami hunger strikers at the Oslo parliament buildings in 1979. "Norway a law? Sami Rights! 2nd day." The one on the right [illegible] day."

1968
The waterways department makes plans to exploit large parts of Samiland. One plan is to divert the Deatnu (Tana) River from Iessjavri to Alta instead of letting it flow naturally to Tana. Opposition is great and the storm of protest is building.

1969
The Alta city council demands that all damages resulting from such a development be thoroughly investigated.

1970
The entire village of Masi demonstrates against the construction. According to plans, the whole village of 400 inhabitants will be flooded.

15 August — a public meeting is arranged. The entire village takes part, carrying placards saying: "We will not move — we came first." and "We will not evacuate again."

1971-73
Protest is high against flooding the village of Masi. The Tromsø Museum is asked to make a report on the value of protecting the waterway. The museum refuses on grounds that three months for the job is too short.

Protests are heard from Finland.

1973
The Alta Committee for Saving the Alta-Kautokeino Waterway is formed. The Norwegian parliament legislates permanent protection of Masi. A power line between Alta and Lakselv, with a 36-km. detour to Cavcu, is built.

1974
The Finnish foreign minister takes the case up in the Nordic Council. The reason: if the plans go into effect, they will harm the Tana River which is a border river between Finland and Norway.

June — Finnmark County chairman proposes a reduced development of the Alta-Kautokeino waterway. Permission is requested, but assessment of resulting damages to reindeer herding, salmon fishing, and the countryside is lacking.

1975
A resource board is appointed to study the area in question. The board is to make an overall plan for usage and protection of the plateau. The first thing that the board does is to give consent to construction as long as Iessjavri is to be left out of the plans. The environment department is for postponing research on the environmental assets in the area.

1976
Opposition grows steadily. The city councils in Alta and Kautokeino decide against development of the waterway. The Finnmark County council decides in favour of construction with a vote of 24 to 11.

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* For further ecological information write: Norway's Association for the Preservation of Nature (Norges Naturvernforbund), Akersg. 63, N-Oslo 1, Norway.

WE ARE SAMIS and we intend to remain Samis. We are neither more nor less than other peoples of the world. We are a people with a common area of settlement, a language of our own, and a cultural and social organization of our own. Through the course of history, we have survived in Sami Eatnan (Land of the Samis). We possess a culture which we wish to expand and develop.

We have experienced how the land where we lived and survived has been taken from us; how that land has deteriorated and been deprived of wealth. We have been pushed aside. Strangers have taxed us, strangers have lied to us, and strangers have separated our people with their own national boundaries. We have experienced the deterioration of our traditions and our cultural heritage. We have experienced the deprivation of our customs and our way of life, which have been taken from us and replaced by new and alien customs.

We are one people with a common language, a common history, and a common culture; and we have a strong sense of solidarity. We base ourselves on previous generations, while we live and work in the present for the coming generations.

Only when we have been granted a safe position legally, socially and economically, can our culture fully develop. Consequently, we demand:

1. That the Samis be given legal status as an indigenous people.
2. That the customary rights of the Samis to land and water be confirmed by acts of parliament.
3. That the Sami livelihood be protected by laws and regulations.
4. That the Sami language be given status as an official language.
5. That the Sami order of society and representative bodies of the Samis be officially recognized so that we have realistic opportunities to debate and make decisions in matters that concern ourselves.
6. That Sami tradition, history, art, knowledge, and language be preserved and taught to our descendants through schools and other means.
7. To live in peaceful coexistence with our neighbours, and support and promote world peace, while basing ourselves on our own traditional values.

This programme is entirely in accordance with the U.N. Declaration of Human Rights.

From the Sami Cultural Political Programme 1972 and the Sami Political Programme 1980, issued by the Nordic Sami Council

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The future of the North

M.A. Ballantyne

I WOULD LIKE TO THANK the Honourable John Munro, Minister of Indian Affairs and Northern Development [DIAND], for the opportunity to express my views tonight.

At the outset, I would like to state that I have some difficulty in understanding the nature and the expected results of tonight's and tomorrow's meetings.

As I understand it, the Minister has agreed to listen to the views of individual northerners during three short meetings in Yellowknife organized by the Liberal Party of the Northwest Territories, and has agreed to appear on an open line radio show for two hours on Sunday, the 17th. He has met with the Dene Nation and intends to have a meeting with the Legislative Assembly next week.

On first appearance this seems to be a reasonable and responsible gesture, but after careful study one becomes aware of serious flaws in the format and expectations of the Minister's visit. I would like to outline these to you.

1. If the federal government is really interested in establishing a dialogue with northerners, the Minister for all the people of the North should not be holding public meetings in a partisan forum, such as this tonight.
2. If there is to be meaningful and constructive debate on the future of the North, the federal government must clearly state its own position on these issues and establish the parameters within which it will consider the recommendations put forward by the territorial government, by industry, by native groups, by the business community, and by concerned northerners of all political parties over the past decade and a half.
3. The issues being discussed are too important, and complex, to be rationally discussed in short and perhaps emotional public forums. The people of the North have been attempting to find common positions on many of these issues through our elected political institutions, and it would seem to me that the format, as presented in your pamphlet and briefing papers, would tend to divide northern people in a very non-constructive manner.
4. The federal government has received sufficient views from northerners during the past fifteen years for us to expect some meaningful answers. To put tonight's meeting into historical perspective, I would like to outline briefly a few of the studies and reports done in the North.

(i) **Carrothers Commission***
- 3 June 1965 to 30 August 1966 — 14 months;
- 59 hearings in the North;
- hearings attended by 3039 people in the North;
- 191 briefs submitted to the commission; and
- 420 individuals and group representatives appeared before the commission.

(ii) **Berger Inquiry†**
- March 1974 to December 1977 — 46 months;
- 1565 exhibits;
- 40.789 pages of sworn testimony;
- 281 volumes of transcripts; and

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* See Report of the Advisory Committee on the Development of Government in the Northwest Territories, 2 vols. (Ottawa, 1966)

† See: Northern Frontier, Northern Homeland: The Report of the Mackenzie Valley Pipeline Inquiry, 2 vols. (Ottawa: Supply and Services Canada, 1977)

§ M.A. Ballantyne is the Mayor of Yellowknife. His speech was presented at a public meeting in

- a cost of $5 million.

(iii) **Drury Report**[*]

- July 1977 to December 1979 — 30 months;
- 159 official meetings with individuals and groups;
- 6 seminars on the issues addressed tonight, involving 53 experts, territorial government officials, politicians, native leaders, business leaders, and senior Ottawa bureaucrats;
- 14 federal government agencies and departments submitted briefs; and
- 353 references were made to the issues being discussed tonight.

I understand that since the Drury Report was commissioned, over 57 man-years of work have been done by the federal government on responsible government in the North.

(iv) **Environmental Assessment Review Panel — Norman Wells Pipeline**

- June 1980 to January 1981 — 8 months;
- 77 individuals appeared;
- 30 government representatives;
- 15 groups and associations; and
- 73 briefs presented.

(v) **National Energy Board Hearings — Norman Wells Pipeline**

- October 1980 to March 1981 — 6 months
- 20 submissions by governments, industry, native groups, and other organizations.

(vi) One year ago in a joint position paper presented to the Minister by the Government of the Northwest Territories, the Dene Nation, and the Métis Association, the following areas of mutual concern were identified:

a) an overall long-term plan for the development of non-renewable resources in the Northwest Territories;

b) a northern-based authority which can effectively control and regulate the development of non-renewable resources and which is able to represent and protect the interests of the people of the Northwest Territories;

c) there are no arrangements concluded to date for receiving an identifiable share of the revenues, royalties, and corporate taxes generated by the development of non-renewable resources in the Northwest Territories;

d) there are no guarantees that, with the depletion of northern energy resources, energy supplies will be available to northerners in the future; and

e) there has been no satisfactory resolution to date of the outstanding claims for aboriginal rights.

The people of the Northwest Territories have yet to receive a satisfactory response to these five points.

(vii) **The Question of Nunavut**

- The Unity Committee of the Government of the N.W.T. travelled extensively throughout the North to study the possibility of division. In Frobisher Bay the Legislative Assembly accepted the principle of Nunavut and made recommendations on the subject. There has been no response from the federal government on this matter.

(viii) Queen's University has a study underway right now on political and related land claims issues in the eastern Arctic.

There are countless other studies being done by the federal government and by the Institute for Research on Public Policy.

In the later part of 1980, and to the present time, a number of Cabinet documents on these very subjects have been prepared, reviewed, and re-worked by the federal government with no meaningful participation by our own elected assembly.

I think that we can honestly state that these questions have been asked, studied, discussed, debated, reviewed, and reported.

We have been poked, prodded, and studied by five Ministers of DIAND, by parliamentary committees, academics, sociologists, anthropologists, economists, and political experts. Yet nowhere has the federal government provided its own response, its own views of the flexibility and possible parameters within which we can develop. This has produced a one-sided debate that is completely meaningless and even insulting.

In order to progress, we need answers — not more questions. It is my fear that the federal government is right now planning the future of the North with only token northern participation, and that we will wake up one morning to find out that our future has been decided.

Is this one more example of government in secret and by surprise?

I have only one question to ask the Minister. In view of all the information already available to the federal government — what does the Minister hope to accomplish in this forum?

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[*] See *Constitutional Development in the Northwest Territories: Report of the Special Representative* (Ottawa, Supply and Services Canada, 1979).

Inuit leader on Norwegian situation — May 1981

MARK R. GORDON OF KUUJJUAQ (Fort-Chimo), Québec was a negotiator of the James Bay and Northern Québec Agreement for the Northern Québec Inuit Association. He has worked for years on different aspects of implementation of the agreement, and has served as co-ordinator of the Inuit Committee on National Issues (ICNI), which is negotiating constitutional rights for the Inuit. Presently, he is Political Vice-President of Makivik Corporation. He recently signed a letter to the Norwegian prime minister on behalf of ICNI expressing concern about the situation in Norway.

CARC: What led ICNI to take an interest in the Norwegian situation?

GORDON: We heard news reports about confrontations between police and native people in Norway in relation to a hydro-electric project, and for those of us in Quebec whose life story is going to be dealing with Quebec hydro projects, this was of special interest. One of our staff knew something about Norway and we asked him to find out more. What became clear to us was not only that the situation there was very familiar in some of its elements, but that the Norwegian government was responding to it the way the Department of Indian Affairs might have done fifteen years ago — that is, simply denying the political, environmental, social, and cultural aspects of the problem.

CARC: What did you learn about Norway?

GORDON: We found that the government officials were saying that they could not change their minds about this hydro project because official decisions had been taken and it would be wrong to change them. We find that a pretty weak excuse. All progress depends on changing awareness, and for aboriginal peoples all over the world, that is the only progress we can hope for. We have been pushed aside by history and if we are to survive, we have to work out new relationships and understandings with the people who did the pushing.

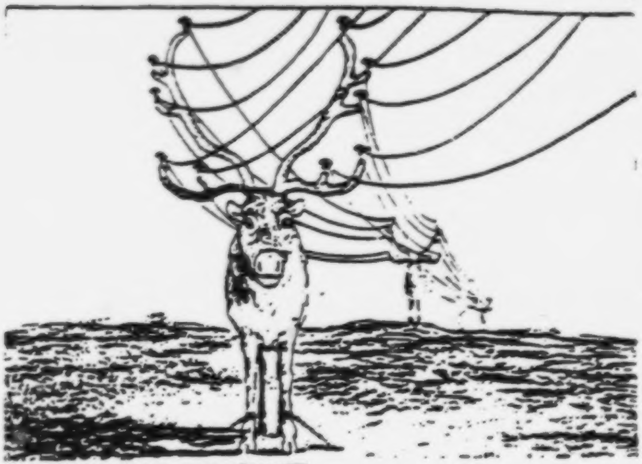
CARC: What lessons are there in the Norwegian situation for Canada?

GORDON: Well, the main lesson may be that a progressive society like Norway which has been well-known for many social reforms and international human rights efforts can suddenly find itself confused when confronted with an aboriginal rights issue. That reminds us how important it is to create awareness of native issues and to show that they are legitimate. That is the approach Inuit in Canada are taking to constitutional and land claims issues like Nunavut. We think that is the right approach and we think that we can get good results that way like we did on 30 January this year when the parliamentary constitution committee unanimously accepted our native rights amendements. Many of the politicians in the room were weeping after the vote and it was a very emotional moment to have Canada's government change its mind about something fundamental like native rights. But that moment didn't just happen: it took us years of discussion, publicity, argument, legal briefs, and frankly, a lot of continued suffering by our people. But on balance we believe that was the right way.

CARC: Did your protest to Norway do any good or was it seen as outside interference?

GORDON: I don't know how much good it did, but it was certainly picked up by the press and gave some moral support to the Samis. We made it clear in our letter to the Norwegian prime minister that we did not want to meddle in Norwegian matters, but that in important issues of human rights — and the Helsinki Agreement* is based on the belief that these matters are international — none of us can afford to ignore what is happening to our fellow man.

On the other hand, if countries like Canada and Norway can show the way, as with our Canadian constitutional recognition of aboriginal rights, then it becomes just a little harder for other states to ignore the situation of their own aboriginal people. Worldwide changes don't happen overnight, but that's why it's important that countries like Norway and Canada — where information is relatively free — work these things out through discussion and good sense. In part it is an educational process. Our own constitutional recognition now is going to have an impact on children growing up; they won't have the same attitudes towards native peoples that many adults now have. That will be real progress.



Alta-Kautokeino. by Hans Norman Dahl. 1979.

CARC: Where do you go from here?

GORDON: We think that native people are more aware than ever of the need to help each other with information and experience, with precedents and ideas. In the past we have been weak and divided within the societies which took over or conquered our lands. Sometimes we have a special role, as in the Arctic where Inuit in Alaska, Greenland, and Canada are working together through the ICC [Inuit Circumpolar Conference] to draw attention to the needs of the arctic economy and environment, as well as to initiate projects ourselves. The Samis worked with Inuit in an Arctic Peoples Conference in 1973 and we think that there are more grounds for co-operation in the future. The North-South Dialogue is all very fine, but there is a North-South dialogue needed in some of our wealthy developed countries with the less-developed northern areas. The northern peoples themselves have to help each other rather than rely on the interest or goodwill of the industrialized areas from which they are governed.

Canadian
Arctic
Resources
Committee

Chairman: **Alastair Lucas**
Executive Director: **Murray Coolican**

The Canadian Arctic Resources Committee is a non-profit organization with offices at 46 Elgin Street, Room 11, Ottawa, Ontario K1P 5K6

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* A declaration of guidelines for relations between states reached under the auspices of the Conference on Security and Co-operation in Europe (CSCE) in July 1975

INTERNATIONAL PERSPECTIVE

LESSON 3: Learning From The Experience of Others

Time: One or two class periods.

Objectives:

1. The students will be able to modify their resolutions based on the information they have gained from the review of international case studies.
2. The students will be able to cooperate as they work towards a final set of resolutions.
3. The students will be able to identify the most appropriate case studies for application to the Alaskan situation.

Procedures:

1. Have one group of students become the Alaskan contingent at this "international conference" while other students maintain their roles as representatives from foreign countries.
2. Have the Alaskan contingent take their concerns to the other groups and ask these groups for advice about ways of amending ANCSA.
3. It is the job of the other groups to make some suggestions to the Alaskans.
4. The teacher or a secretary takes down these important suggestions.
5. After approximately a half an hour of this role-play the delegates need to vote on the most important suggestions that will be included in the resolutions that participating students will bring to the annual Youth Conference (to be arranged).
6. If additional time is necessary, have the students spend an additional class period finalizing and formalizing their resolutions.

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In this short period of time you have studied many important issues. We hope you feel prepared to offer your resolutions, ask questions, and learn more about these difficult issues. Although these lessons are over for now, the issues still exist. If time permits, you may want to take your resolutions and present them to the community. Ask your elders for their opinions. Find out if there are any major differences. If there are, you may need to consider them. This extra step is important. It may give you additional confidence to present your resolutions, knowing that the elders approve of them. Find out!

We would also like to ask you to bring your work to the Youth Conference. We are anticipating the attendance of many students from different parts of Bristol Bay. Last year, when students shared information about their villages, it was a real eye opener. Different issues were important in different villages. You may find that other students have found different solutions or made different resolutions. We will have the chance to learn from one another!